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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[VA085/086/089/102/103—5046a;  
FRL-7427-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reorganization of and Revisions to Administrative and General Conformity Provisions; Documents Incorporated by Reference; Recodification of Existing SIP Provisions

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revisions consist of substantive and format changes to Virginia's general administrative provisions and definitions, reorganization and recodification of the general conformity requirements and provisions, recodification of Virginia's oxygenated gasoline regulation, and revisions to the list of technical documents which Virginia incorporates by reference into its air pollution

control regulations. In this action, EPA is also correcting typographical errors and other errata currently found in the Identification of plan rule chart. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on March 10, 2003 without further notice, unless EPA receives adverse written comment by February 6, 2003. 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:** Written comments should be mailed to Harold A. Frankford, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available 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; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814-2108, or by e-mail at frankford.harold@epa.gov. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Between April 30, 1997 and June 22, 1999, the Commonwealth of Virginia submitted a series of formal revisions to

its SIP. These SIP revisions consist of the addition of general administrative provisions and definitions (9 VAC 5, Chapter 170) submitted by Virginia on February 18, 1998, substantive and format revisions submitted by Virginia on March 4, 1998 regarding its general administrative provisions and definitions (9 VAC 5, Chapters 10 and 20), a revision submitted by Virginia on April 20, 1998 which further reorganizes and recodifies the format of the Commonwealth's general conformity requirements (9 VAC 5, Chapter 160), a revision submitted by Virginia on April 30, 1997 which revises the format of Virginia's oxygenated gasoline regulation (2 VAC 5, Chapter 480), and a revision submitted by Virginia on June 22, 1999 which amends the list of documents which Virginia incorporates by reference (9 VAC 5, Chapter 20, Regulation 5-20-21).

##### II. Summary of SIP Revisions

###### *A. Substantive Revisions to Virginia's General Administrative Provisions and Definitions*

On February 18, 1998 and March 4, 1998, Virginia submitted substantial revisions, both in terms of format and substance, to its general administrative provisions and definitions. Whereas Virginia's current SIP-approved administrative provisions are located in Part II of VR-120 or 9 VAC 5 Chapter 20, the revised structure splits these general administrative provisions into two major chapters—Chapter 20 (General Provisions) and Chapter 170 (Regulations for General Administration). The individual 9 VAC 5-170 Sections are organized below:

| Chapter 170 citation | Regulation for general administration               | Former citation in Chapters 20 and 160 |
|----------------------|-----------------------------------------------------|----------------------------------------|
| Part I               | Definitions                                         |                                        |
| 5-170-10 .....       | Use of Terms .....                                  | 5-10-10                                |
| 5-170-20 .....       | Terms Defined .....                                 | 5-10-20                                |
|                      |                                                     | 5-160-20                               |
| Part II              | General Provisions                                  |                                        |
| 5-170-30 .....       | Applicability .....                                 | 5-20-10A.-C.                           |
| 5-170-60 .....       | Availability of Information .....                   | 5-20-150                               |
|                      |                                                     | 5-160-100                              |
| Part V               | Enforcement                                         |                                        |
| 5-170-120 .....      | Enforcement of Regulation, Permits and Orders ..... | 5-20-30A.-D.                           |
|                      |                                                     | 5-160-60                               |
| 5-170-130A. ....     | Right of Entry .....                                | 5-20-100                               |
| Part VI              | Board Actions                                       |                                        |
| 5-170-150 .....      | Local Ordinances .....                              | 5-20-60                                |
| 5-170-160 .....      | Conditions on Approvals .....                       | 5-20-110                               |

| Chapter 170 citation | Regulation for general administration     | Former citation in Chapters 20 and 160 |
|----------------------|-------------------------------------------|----------------------------------------|
| 5-170-170 .....      | Considerations for Approval Actions ..... | 5-20-140                               |

In the February 18, 1998 and March 4, 1998 submittals, Virginia also adds or revises the following definitions of terms:

*Added:* Public Hearing, Regulation of the Board, These Regulations, Virginia Register Act.

*Revised:* Administrative Process Act, Consent Agreement, Consent Order, Director, Emergency Special Order, Good Engineering Practice, Order, Owner, Person, Pollutant, Source, Special Order, Virginia Air Pollution Control Law, Volatile Organic Compounds.

*No Wording Changes; Revised Citations Only:* Virginia has recodified the following definitions from 9 VAC 5-10-20 to 9 VAC 5-170-20: Administrative Process Act, Confidential Information, Variance, and Virginia Register Act. In addition, Virginia has placed duplicate versions of the following SIP definitions found elsewhere in 9 VAC 5 into Regulation 9 VAC 5-170-20: Air Pollution, Board, Department, Director, Emergency, Federal Clean Air Act, Locality, Virginia Air Pollution Control Law, and Virginia Motor Vehicle Emissions Control Law.

In addition to the recodification, Virginia made substantive revisions to the following provisions when compared to the wording of the comparable SIP-approved provisions formerly located in 9 VAC 5, Chapter 20: 5-170-30, 5-170-60, 5-170-120, 5-170-150, 5-170-160, and 5-170-170. Virginia revised the wording of these provisions to clarify the intent of the rules, or to conform with the statutory provisions of the Virginia Air Pollution Control Law. Virginia has also revised several definitions found in Regulation 5-170-20, also to clarify the intent of the term, or in order to conform with the wording and intent of the state statute. Virginia revised the definition of the

term “volatile organic compound” to add perchloroethylene as an exempt VOC solvent, and substantively revised the wording of the definition of “person” when compared to that of the SIP-approved definition.

#### *B. Revisions to Virginia's General Conformity Provisions*

On April 20, 1998, Virginia revised its SIP-approved General Conformity rules (9 VAC 5 Chapter 160) which had been incorporated into the Virginia SIP at 40 CFR Section 52.2420(c)(118). These rules are revised by:

1. Revising 9 VAC 5-160-10 (General), Section B.
2. Revising the definition of “Emergency”, as defined in 9 VAC 5-160-20.
3. Removing definitions and provisions from Chapter 160 which are now duplicated in Chapter 170. The definitions are for the terms Administrative Process Act, Confidential Information, Consent Agreement, Consent Order, Emergency Special Order, Formal Hearing, Order, Party, Public Hearing, Special order, Variance, and Virginia Register Act. The provisions are: Enforcement of Regulations and Orders (9 VAC 5-160-60), and Availability of Information (9 VAC 5-160-100).
4. Removing from Chapter 160 the following additional provisions: Establishment of Regulations and Orders (9 VAC 5-160-50), Hearings and Proceedings (9 VAC 5-160-70), and Appeals (9 VAC 5-160-100).

#### *C. Documents Being Incorporated by Reference*

On June 22, 1999, Virginia submitted revisions to the list of Federal, technical, and scientific documents which Virginia incorporates by reference. Virginia lists these documents

in 9 VAC 5, Chapter 20 (General Provisions), Regulation 5-20-21. In this submittal, Virginia incorporates by reference the following technical and scientific documents:

1. D323-94, “Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)” from Section 5, Volume 05.01 of the 1989 Annual Book of American Society for Testing Materials (ASTM) Standards. (Replacing D323-82)
2. D97-93, “Standard Test Method for Pour Point of Premium Oils” from Section 5, Volume 05.01 of the 1989 Annual Book of ASTM Standards. (Replacing D97-87)
3. National Fire Prevention Association (NFPA) 385, Standard for Tank Vehicles for Flammable and Combustible Limits, 1990 Edition. (Replacing the 1985 Edition)
4. NFPA 30, Flammable and Combustible Liquids Code. 1993 Edition (Replacing the 1987 Edition).
5. NFPA 30A, Automotive and Marine Service Station Code, 1993 Edition (Replacing the 1987 Edition).

#### *D. Recodification of Virginia's Oxygenated Gasoline Regulations*

On April 30, 1997, Virginia submitted amendments to the Commonwealth's oxygenated gasoline regulations as a revision to the SIP. In a separate action, on February 17, 2000 (65 FR 8051), EPA had approved substantive revisions to Regulation 2 VAC 5-480-20 as a revision to the SIP. By this action, EPA is approving revisions to the SIP which recodify Virginia's oxygenated gasoline regulation from VR 115-04-28 Sections 1 and 3 through 8 to 2 VAC 5 Chapter 480, Regulations 2 VAC 5-480-10, and 5-480-30 through 5-480-80, respectively. These revisions are summarized in the following chart:

### 2 VAC 5 CHAPTER 480—REGULATION GOVERNING THE OXYGENATION OF GASOLINE

| New SIP citation | Title                                                   | Current SIP citation    |
|------------------|---------------------------------------------------------|-------------------------|
| 5-480-10 .....   | Definitions .....                                       | VR115-04-28, section 1. |
| 5-480-30 .....   | Minimum oxygenate content .....                         | VR115-04-28, section 3. |
| 5-480-40 .....   | Nature of oxygenates .....                              | VR115-04-28, section 4. |
| 5-480-50 .....   | Recordkeeping transfer requirements .....               | VR115-04-28, section 5. |
| 5-480-60 .....   | Gasoline pump labeling .....                            | VR115-04-28, section 6. |
| 5-480-70 .....   | Sampling, testing and oxygen content calculations ..... | VR115-04-28, section 7. |
| 5-480-80 .....   | Compliance and enforcement .....                        | VR115-04-28, section 8. |

### III. EPA's Evaluation of SIP Revisions

#### A. Definitions

EPA has reviewed Virginia's new and revised definitions and has determined that they are consistent with the statutory provisions of the Virginia Air Pollution Control Law and the comparable requirements of the Clean Air Act and 40 CFR part 51. Virginia revised the wording of several definitions in order to improve their clarity and intent. Virginia also has substantially revised the definition of "Person" in order to comply with revisions to "Person" found in chapter 13, section 10.1.1300 of Virginia's Air Pollution Control Law. EPA has determined that the same groups covered by the current SIP definition of "Person" are still covered under the wording of the revised definition, and therefore concludes that the revised definition of "Person" is equivalent in scope to the current SIP definition. Virginia has also revised the definition of "Volatile Organic Compound" by including perchloroethylene to the list of exempt compounds. EPA has determined that Virginia's revised definition is consistent with the definition of "volatile organic compound" found at 40 CFR 51.100(s).

#### B. New and Revised Administrative Provisions

EPA has reviewed the revisions to the administrative regulations of 9 VAC 5, Chapter 170, and has determined that the revised wording improves the clarity and intent of the provisions, streamlines the process of enforcing regulations, permits and orders, and defines the procedures for determining the applicability of a provision where conflicts between provisions apply. The revised regulations strengthen the public hearing process which local agencies must follow, and provide additional assurances that local ordinances will conform with the applicable state requirements.

#### C. Revised General Conformity Provisions

Virginia had amended its general conformity provisions so that the general and administrative provisions in 9 VAC 5 Chapter 160 would be combined with the identical provisions of 9 VAC 5, Chapter 170. Many of the definitions and administrative provisions in the SIP-approved version of 9 VAC 5, Chapter 160 make specific references to Federal agencies and their obligation to comply with state requirements. The comparative requirements of 9 VAC 5 Chapter 170 make no reference to Federal agencies.

Instead, the term "Owner" is used in the place of "Federal Agencies". However, the term "Owner" refers to "Person" which by definition includes "Governmental Bodies." EPA has determined this to be an equivalent substitution for "Federal Agency." In addition, the term "Owner" also refers to "Bodies Politic," which EPA interprets to include the Federal Government and its individual agencies. The term "Department" found in the 9 VAC 5-160 provisions is not found in the consolidated 9 VAC 5-170 rules—only the term "Board." The SIP, however, has historically only conferred power to the Board. In addition, 40 CFR part 93 does not require "Department" to be included in Virginia's general conformity rules.

#### D. EPA's Evaluation of Revised Incorporation by Reference Provisions

In its support document accompanying the June 1999 SIP revision submittal, Virginia explained that the technical documents found in Regulation 9 VAC 5-20-21 are used to make technical evaluations related to new source review and emission standards for volatile organic compounds. Virginia revised the five documents listed above to reflect the latest available edition. EPA agrees that states should use the latest available technical documents to assist in their decisionmaking, and therefore finds these revisions to be acceptable.

#### E. Recodification of Virginia's Oxygenated Gasoline Regulations

The revisions to 2 VAC 5, Chapter 480, sections 2-480-10 and 2-480-30 through 2-480-80 consist only of changes to the citation format of Virginia's oxygenated gasoline rules. There are no substantive wording changes to the current SIP-approved provisions.

#### F. Impact of Virginia's Audit Privilege and Immunity Laws on These SIP Revisions

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, 1997, 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 section 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, 1997 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 Clean Air Act, 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. Corrections to the Chart in 40 CFR 52.2420(c) Summarizing the Approved SIP Rules

On April 21, 2000 (65 FR 21513), EPA approved the revised incorporation by reference format for 40 CFR part 52, subpart VV, § 52.2420(c). This chart lists those Virginia regulations which EPA has incorporated by reference into the Virginia SIP as well as their effective dates in the Commonwealth. After review of the chart as published in the April 21, 2000 **Federal Register**, the Virginia Department of Environmental Quality informed EPA that the chart as

published contained typographical errors, omissions, and inaccurate information. On July 6, 2000 (65 FR 41592) and July 14, 2000 (65 FR 43840), correction notices were published which corrected some, but not all, of the incorrect entries. This action corrects the remaining inaccurate entries to the chart in § 52.2420(c). These corrections revise information to air quality provisions which are not otherwise revised by the other SIP revisions being evaluated by EPA in this action. The information consists of corrected titles of the air quality regulations, corrected VAC citations, and corrected effective dates of some provisions, and are summarized below:

| Federal Register page (65 FR) | Entry                                                                                                     | Column title                      | Description of correction                              |
|-------------------------------|-----------------------------------------------------------------------------------------------------------|-----------------------------------|--------------------------------------------------------|
| 21321 .....                   | Chapter 20 General Provisions (Title)                                                                     |                                   | Add "[Part II]" after "Chapter 20 General Provisions". |
|                               | 5-20-160 .....                                                                                            | State Effective Date .....        | Remove the date "7/1/97".                              |
|                               | 5-20-170 .....                                                                                            | State Effective Date .....        | Remove the date "7/1/97".                              |
|                               | 5-20-180 .....                                                                                            | State Effective Date .....        | Remove the date "7/1/97".                              |
| 21322 .....                   | 5-20-205 .....                                                                                            | State Effective Date .....        | Replace "2/1/97" with "1/1/97".                        |
| 21323 .....                   | 5-40-50 .....                                                                                             | State Effective Date .....        | Replace "7/1/97" with "4/17/95".                       |
|                               | 5-40-310A.-E. ....                                                                                        | Title/Subject .....               | Replace "Dioxide" with "Oxides".                       |
| 21324 .....                   | 4-40-450 .....                                                                                            | State citation (9 VAC 5) .....    | Replace "4-40-450" with "5-40-450".                    |
|                               | 5-40-710 .....                                                                                            | Explanation [Former SIP Citation] | Replace "120-04-614." with "120-04-0614.".             |
|                               | 5-40-720 .....                                                                                            | Explanation [Former SIP Citation] | Replace "120-04-0613." with "120-04-0615.".            |
| 21340 .....                   | 5-80-10/Article 6 .....                                                                                   | State citation (9 VAC 5) .....    | Remove "Article 6".                                    |
| 21342 .....                   | Article 9 Permits—Major Stationary Sources and Major Modifications Located in Nonattainment Areas (Title) |                                   | Add "[ ]" around "120-08-03".                          |
|                               | 5-80-2000 .....                                                                                           | Explanation [Former SIP Citation] | Replace ".03A." with ".03A".                           |
|                               | 5-80-2080 .....                                                                                           | Explanation [Former SIP Citation] | Replace ".03I." with ".03I".                           |
| 21343 .....                   | 5-9-150 .....                                                                                             | State citation (9 VAC 5) .....    | Replace "5-9-150" with "5-91-150".                     |
| 21344 .....                   | 4-91-450 .....                                                                                            | State citation (9 VAC 5) .....    | Replace "4-91-450" with "5-91-450".                    |
|                               | 4-91-460 .....                                                                                            | State citation (9 VAC 5) .....    | Replace "4-91-460" with "5-91-460".                    |
| 21346 .....                   | Chapter 160 General Conformity Rules (Title).                                                             | State Effective Date .....        | Remove "1/24/97".                                      |

Similarly, on October 19, 2000 (65 FR 62626), EPA approved a revision to 9 VAC 5 Chapter 30 (Ambient Air Quality Standards). This revision removed section 9 VAC 5-30-20, the old ambient air quality standards for total suspended particulate matter (TSP) from the Virginia SIP. The intent of this action was to remove the entry for section 9 VAC 5-30-20 from the chart in 40 CFR 52.2420(c). This action will remove section 9 VAC 5-30-20 from the chart.

#### V. Final Action

EPA is approving the addition of 9 VAC 5, Chapter 170, as well as the revisions to 9 VAC 5 Chapters 10, 20, and 160 and 2 VAC 5, Chapter 480 as revisions to the Virginia SIP. EPA is also correcting the typographical errors, omissions and incorrect information found in the chart of previously-approved SIP actions found at 40 CFR 52.2420(c).

EPA is publishing this rule without prior proposal because the Agency 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 March 10, 2003 without further notice unless EPA receives adverse comment by February 6, 2003. 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.

#### VI. Administrative Requirements

##### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic

impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995

(15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### *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 rule 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**. This rule 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 March 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 to revise 9 VAC 5 chapters 10, 20, 30, 40, 80, 91, 160 and 170, and 2 VAC 5 chapter 480 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 17, 2002.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

#### **PART 52—[AMENDED]**

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:

a. Under Chapter 10 by revising the entry for 5-10-10; adding an entry for 5-10-20 at the end of the third entry for 5-10-20; and removing entry VR120-01-02.

b. Under Chapter 20 by revising entries 5-20-160, 5-20-170, 5-20-180, and 5-20-205; and removing entries 5-20-30A.-D., 5-20-60, 5-20-100, 5-20-110, 5-20-140, 5-20-150, VR120-02-14B.

c. Under Chapter 30 by removing entry 5-30-20.

d. Under Chapter 40 by removing entry 4-4-450 and revising entries 5-40-50, 5-40-310A.-E., 5-40-710, and 5-40-720.

e. Under Chapter 80 by revising entries 5-80-10/Article 6, 5-80-2000, and 5-80-2080.

f. Under Chapter 91 by removing entries 5-9-150, 4-91-450, and 4-91-460.

g. Under Chapter 160 by revising entries for 5-160-10 and 5-160-20; and removing entries 5-160-50, 5-160-60, 5-160-70, 5-160-90, and 5-160-100.

h. By adding a new Chapter 170 including headings, with numerical entries for Part I, Part II, Part V, and Part VI.

i. Under 2 VAC 5 Chapter 480 by removing entries VR115-04-28, Sec. 1, VR115-04-28, Sec. 3, VR115-04-28, Sec. 4, VR115-04-28, Sec. 5, VR115-04-28, Sec. 6, VR115-04-28, Sec. 7 and VR115-04-28, Sec. 8; and adding entries 5-480-10, 5-480-30, 5-480-40, 5-480-50, 5-480-60, 5-480-70, and 5-480-80.

#### **§ 52.2420 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

## EPA—APPROVED REGULATIONS IN THE VIRGINIA SIP

| State citation (9 VAC 5)                                         | Title/subject                                             | State effective date | EPA approval date                               | Explanation [former SIP citation]                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------|-----------------------------------------------------------|----------------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Chapter 10 General Definitions [Part 1]</b>                   |                                                           |                      |                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 5–10–10 .....                                                    | General .....                                             | 1/1/98 .....         | 1/7/03 [Insert Federal Register page citation]. | 120–02–01 Sections 5–10–10A, B and C are revised                                                                                                                                                                                                                                                                                                                                                                                                                         |
| * .....                                                          | * .....                                                   | * .....              | * .....                                         | * .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 5–10–20 .....                                                    | Terms Defined .....                                       | 1/1/98 .....         | 1/7/03 [Insert Federal Register page citation]. | Terms Added—Public hearing: Regulations for the Control and Abatement of Air Pollution, Regulation of the Board, These regulations.<br>Terms Revised—Good Engineering Practice, Person, Volatile organic compound.<br>Terms Deleted (moved to 9 VAC 5–170–20)—Administrative Process Act, Air quality control region, Air quality maintenance area, Confidential information, Consent agreement, Consent order, Emergency special order, Order, Special order, Variance. |
| * .....                                                          | * .....                                                   | * .....              | * .....                                         | * .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Chapter 20 General Provisions</b>                             |                                                           |                      |                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| * .....                                                          | * .....                                                   | * .....              | * .....                                         | * .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 5–20–160 .....                                                   | Registration .....                                        | 4/17/95 .....        | 4/21/00 65 FR 21320.                            | 120–02–31                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 5–20–170 .....                                                   | Control Programs .....                                    | 4/17/95 .....        | 4/21/00 65 FR 21320.                            | 120–02–32                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 5–20–180 .....                                                   | Facility and Control Equipment Maintenance or Malfunction | 4/17/95 .....        | 4/21/00 65 FR 21320.                            | 120–02–34                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| * .....                                                          | * .....                                                   | * .....              | * .....                                         | * .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 5–20–205 .....                                                   | Prevention of Significant Deterioration Areas.            | 1/1/97 .....         | 3/23/98 65 FR 13795.                            | Former Appendix L—Effective 2/1/92.                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| * .....                                                          | * .....                                                   | * .....              | * .....                                         | * .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Chapter 40 Existing Stationary Sources [Part IV]</b>          |                                                           |                      |                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Part I Special Provisions</b>                                 |                                                           |                      |                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| * .....                                                          | * .....                                                   | * .....              | * .....                                         | * .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 5–40–50 .....                                                    | Notification, Records and Reporting.                      | 4/17/95 .....        | 4/21/00 65 FR 21320.                            | 120–04–05                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| * .....                                                          | * .....                                                   | * .....              | * .....                                         | * .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Part II Emission Standards</b>                                |                                                           |                      |                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| * .....                                                          | * .....                                                   | * .....              | * .....                                         | * .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Article 4 General Process Operations [Rule 4–4]</b>           |                                                           |                      |                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 5–40–310A.–E .....                                               | Standard for Nitrogen Oxides ..                           | 1/1/93 .....         | 4/28/99 64 FR 22792.                            | 120–04–0408                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| * .....                                                          | * .....                                                   | * .....              | * .....                                         | * .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Article 6 Rubber Tire Manufacturing Operations [Rule 4–6]</b> |                                                           |                      |                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| * .....                                                          | * .....                                                   | * .....              | * .....                                         | * .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 5–40–710 .....                                                   | Facility and Control Equipment Maintenance or Malfunction | 4/17/95 .....        | 4/21/00 65 FR 21320.                            | 120–04–0614                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 5–40–720 .....                                                   | Permits .....                                             | 4/17/95 .....        | 4/21/00 65 FR 21320.                            | 120–04–0615                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

## EPA—APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

| State citation (9 VAC 5)                                                                                              | Title/subject                                                    | State effective date         | EPA approval date                               | Explanation [former SIP citation]                                                                                                                                                                                                                          |
|-----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|------------------------------|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| *                                                                                                                     | *                                                                | *                            | *                                               | *                                                                                                                                                                                                                                                          |
| <b>Chapter 80 Permits for Stationary Sources [Part VIII]</b>                                                          |                                                                  |                              |                                                 |                                                                                                                                                                                                                                                            |
| 5–80–10/Article 6 ....                                                                                                | New and Modified Stationary Sources.                             | 4/17/95 .....                | 4/21/00 65 FR 21320.                            | 120–08–01                                                                                                                                                                                                                                                  |
| *                                                                                                                     | *                                                                | *                            | *                                               | *                                                                                                                                                                                                                                                          |
| <b>Article 9 Permits—Major Stationary Sources and Major Modifications Located in Nonattainment Areas. [120–08–03]</b> |                                                                  |                              |                                                 |                                                                                                                                                                                                                                                            |
| 5–80–2000 .....                                                                                                       | Applicability .....                                              | 1/1/93 .....<br>4/1/99 ..... | 4/21/00 65 FR 21320.                            | .03A (9/21/99, 64 FR 51047).                                                                                                                                                                                                                               |
| *                                                                                                                     | *                                                                | *                            | *                                               | *                                                                                                                                                                                                                                                          |
| 5–80–2080 .....                                                                                                       | Compliance determination and verification by performance testing | 1/1/93 .....<br>4/1/99 ..... | 4/21/00 65 FR 21320.                            | .03I (9/21/99, 64 FR 51047).                                                                                                                                                                                                                               |
| *                                                                                                                     | *                                                                | *                            | *                                               | *                                                                                                                                                                                                                                                          |
| <b>Chapter 160 General Conformity Rules 1/24/97</b>                                                                   |                                                                  |                              |                                                 |                                                                                                                                                                                                                                                            |
| 5–160–10 .....                                                                                                        | General. ....                                                    | 1/1/98 .....                 | 1/7/03 [Insert Federal Register page citation]. | Paragraph 5–160–10 is revised.                                                                                                                                                                                                                             |
| 5–160–20 .....                                                                                                        | Terms Defined .....                                              | 1/1/97 .....<br>1/1/98 ..... | 1/7/03 [Insert Federal Register page citation]. | Terms revised—Emergency. Terms deleted—Administrative Process Act, Confidential information, Consent agreement, Consent order, Emergency special order, Formal hearing, Order, Party, Public hearing, Special order, Variance, Virginia Register Act.      |
| *                                                                                                                     | *                                                                | *                            | *                                               | *                                                                                                                                                                                                                                                          |
| <b>Chapter 170 Regulation for General Administration</b>                                                              |                                                                  |                              |                                                 |                                                                                                                                                                                                                                                            |
| <b>Part I Definitions</b>                                                                                             |                                                                  |                              |                                                 |                                                                                                                                                                                                                                                            |
| 5–170–10. ....                                                                                                        | Use of Terms .....                                               | 1/1/98 .....                 | 1/7/03 [Insert Federal Register page citation]. | Split out from 9 VAC 5–10–10                                                                                                                                                                                                                               |
| 5–170–20. ....                                                                                                        | Terms Defined .....                                              | 1/1/98 .....                 | 1/7/03 [Insert Federal Register page citation]. | Split out from 9 VAC 5–10–20 and 5–160–20<br>Terms Added—Public hearing, Regulation of the Board.<br>Terms Revised from 4/17/95 version—Consent agreement, Consent order, Emergency special order, Order, Owner, Person, Pollutant, Special Order, Source. |
| <b>Part II General Provisions</b>                                                                                     |                                                                  |                              |                                                 |                                                                                                                                                                                                                                                            |
| 5–170–30 .....                                                                                                        | Applicability .....                                              | 1/1/98 .....                 | 1/7/03 [Insert Federal Register page citation]. | Split out from 9 VAC 5–20–10                                                                                                                                                                                                                               |
| 5–170–60. ....                                                                                                        | Availability of Information .....                                | 1/1/98 .....                 | 1/7/03 [Insert Federal Register page citation]. | Replaces 9 VAC 5–20–150 and 5–160–100.                                                                                                                                                                                                                     |
| <b>Part V Enforcement</b>                                                                                             |                                                                  |                              |                                                 |                                                                                                                                                                                                                                                            |
| 5–170–120A.–C .....                                                                                                   | Enforcement of Regulations, Permits and Orders                   | 1/1/98 .....                 | 1/7/03 [Insert Federal Register page citation]. | Replaces 9 VAC 5–20–30A.–D. and 5–160–60.                                                                                                                                                                                                                  |
| 5–170–130A .....                                                                                                      | Right of Entry .....                                             | 1/1/98 .....                 | 1/7/03 [Insert Federal Register page citation]. | Replaces 9 VAC 5–20–100.                                                                                                                                                                                                                                   |

## EPA—APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

| State citation (9 VAC 5)                                                    | Title/subject                                     | State effective date         | EPA approval date                               | Explanation [former SIP citation] |
|-----------------------------------------------------------------------------|---------------------------------------------------|------------------------------|-------------------------------------------------|-----------------------------------|
| <b>Part VI Board Actions</b>                                                |                                                   |                              |                                                 |                                   |
| 5-170-150 .....                                                             | Local Ordinances .....                            | 1/1/98 .....                 | 1/7/03 [Insert Federal Register page citation]. | Replaces 9 VAC 5-20-60.           |
| 5-170-160 .....                                                             | Conditions on Approvals .....                     | 1/1/98 .....                 | 1/7/03 [Insert Federal Register page citation]. | Replaces 9 VAC 5-20-110.          |
| 5-170-170 .....                                                             | Considerations for Approval Actions.              | 1/1/98 .....                 | 1/7/03 [Insert Federal Register page citation]. | Replaces 9 VAC 5-20-140.          |
| *                                                                           | *                                                 | *                            | *                                               | *                                 |
| <b>2 VAC 5 Chapter 480 Regulation Governing the Oxygenation of Gasoline</b> |                                                   |                              |                                                 |                                   |
| 5-480-10 .....                                                              | Definitions .....                                 | 11/1/93; Recodified 4/17/95. | 1/7/03 [Insert Federal Register page citation]. | VR115-04-28, Sec. 1.              |
| *                                                                           | *                                                 | *                            | *                                               | *                                 |
| 5-480-30 .....                                                              | Minimum oxygenate content ....                    | 11/1/93; Recodified 4/17/95. | 1/7/03 [Insert Federal Register page citation]. | VR115-04-28, Sec. 3.              |
| 5-480-40 .....                                                              | Nature of oxygenates .....                        | 11/1/93; Recodified 4/17/95. | 1/7/03 [Insert Federal Register page citation]. | VR115-04-28, Sec. 4.              |
| 5-480-50 .....                                                              | Record keeping and transfer requirements.         | 11/1/93; Recodified 4/17/95. | 1/7/03 [Insert Federal Register page citation]. | VR115-04-28, Sec. 5.              |
| 5-480-60 .....                                                              | Gasoline pump labeling .....                      | 11/1/93; Recodified 4/17/95. | 1/7/03 [Insert Federal Register page citation]. | VR115-04-28, Sec. 6.              |
| 5-480-70 .....                                                              | Sampling, testing and oxygen content calculations | 11/1/93; Recodified 4/17/95. | 1/7/03 [Insert Federal Register page citation]. | VR115-04-28, Sec. 7.              |
| 5-480-80 .....                                                              | Compliance and enforcement ..                     | 11/1/93; Recodified 4/17/95. | 1/7/03 [Insert Federal Register page citation]. | VR115-04-28, Sec. 8.              |

\* \* \* \* \*

3. Section 52.2423 is revised by adding paragraph (r) to read as follows:

**§ 52.2423 Approval status.**

\* \* \* \* \*

(r) EPA approves as part of the Virginia State Implementation Plan the revised references to the documents listed in Chapter 20, Section 9 VAC 5-20-21 (formerly Appendix M), Sections E.4.a.(1), E.4.a.(2), and E.7.a.(1) through E.7.a.(3), of the Virginia Regulations for the Control and Abatement of Air Pollution submitted by the Virginia Department of Environmental Quality on June 22, 1999.

[FR Doc. 03-93 Filed 1-6-03; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 73 and 76**

[MM Docket No. 98-204; FCC 02-303]

RIN 4223

**Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission adopts a new broadcast Equal Employment Opportunity (EEO) rule in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *MD/DC/DE Broadcasters Association v. FCC*. The Commission also amends and modifies their EEO rules for multichannel video programming distributors (MVPDs). The

EEO rules make clear that broadcasters and MVPDs are not required to employ a staff that reflects the racial or other composition of the community or to use racial preferences in hiring. The intended effect is to adopt effective EEO rules for the broadcasting and MVPD industries.

**DATES:** Effective March 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lewis Pulley, Media Bureau, (202) 418-1456 or via e-mail at [lpulley@fcc.gov](mailto:lpulley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Media Bureau's *Second Report and Order* ("2R&O") MM 98-204; FCC 02-303, adopted November 7, 2002 and released November 20, 2002. The complete text of this 2R&O is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street,