

beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

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: May 27, 2004.

L. John Iani,

Regional Administrator, Region 10.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA151-5077; FRL-7671-2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC Emission Standards for AIM Coatings in the Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the volatile organic compound (VOC) emission standards for architectural and industrial maintenance (AIM) coatings in the Northern Virginia portion of the Metropolitan Washington, DC ozone nonattainment area (Northern Virginia Area).

DATES: Written comments must be received on or before July 7, 2004.

ADDRESSES: Submit your comments, identified by VA151-5077 by one of the following methods:

A. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* morris.makeba@epa.gov.

C. *Mail:* Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, 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. VA151-5077. EPA's policy is that all comments received will be included in the public docket without change, 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 regulations.gov or e-mail. The Federal 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 e-mail comment directly to EPA without going through regulations.gov, your e-mail 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.

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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: On February 23, 2004, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of four new regulations to 9 VAC 5, Chapter 40, amendments to one existing article of 9 VAC 5, Chapter 40 and amendments to one article of 9 VAC Chapter 20.

The new regulations are:

(1) 9 VAC 5 Chapter 40, New Article 42—"Emission Standards for Portable Fuel Container Spillage in the Northern Virginia Volatile Organic Compound Emissions Control Area" ("Rule 4-42"). (9 VAC 5-40-5700 to 9 VAC 5-40-5770).

(2) 9 VAC 5, Chapter 40, New Article 47—"Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area" ("Rule 4-47")—(9 VAC 5-40-6820 to 9 VAC 5-40-6970).

(3) 9 VAC 5, Chapter 40, New Article 48—"Emission Standards for Mobile Equipment Repair and Refinishing Operations in the Northern Virginia Volatile Organic Compound Emission Control Area" ("Rule 4-48") (9 VAC 5-40-6970 to 9 VAC 5-40-7110).

(4) 9 VAC 5, Chapter 40, New Article 49—"Emission Standards for Architectural and Industrial Maintenance Coatings in the Northern Virginia Volatile Organic Compound Emissions Control Area" ("Rule 4-49") (9 VAC 5-40-7120 to 9 VAC 5-40-7230).

The February 23, 2004 submittal, also included amendments to 9 VAC 5-20-21 "Documents incorporated by reference" to incorporate by reference additional test methods and procedures needed for Rule 4-42 or Rule 4-49, and, also amendments to section 9 VAC 5-40-3260 of Article 24 "Emission Standards For Solvent Metal Cleaning Operations Using Non-Halogenated Solvents" ("Rule 4-24").

This action concerns only Rule 4-49 of the February 23, 2004 SIP revision and the amendments and additions to 9 VAC 5-20-21.E.1.a.(7), E.4.a.(12) through (17), E.10, E.11, and E.13. The remaining portions of the February 23, 2004 SIP revision submittal, which include Rule 4-42, Rule 4-47, Rule 4-48, the amendment to 9 VAC 5-40-3260, and the addition of subdivision E 12 to 9 VAC 5-20-21, will be the subject of separate rulemaking actions.

I. Background

On January 24, 2003, EPA made a finding that the Metropolitan Washington, DC ozone nonattainment area (DC Area) failed to attain the ozone standard by November 15, 1999, and reclassified the area from "serious" to "severe" for one-hour ozone. As a severe nonattainment area, the DC Area must now meet the requirements of section 182(d) of the CAA, and attain the one-hour ozone standard by November 15, 2005. As a result of the reclassification of the DC Area to severe nonattainment, the Northern Virginia Area must implement additional measures for failure to attain the ozone standard and submit SIP revisions showing ROP of three percent reductions for each year after 1999 until the new statutory attainment date of November 15, 2005, a revised

attainment demonstration and revisions to the contingency plan.

As part of Virginia's strategy to meet its portion of emission reductions keyed to the post-1999 ROPs, the 2005 attainment demonstration, and/or the contingency plan, the state adopted new measures to control volatile organic compound (VOC) emissions from four additional source categories, including a regulation to control emissions from AIM coatings. The standards and requirements contained in Virginia's AIM rule are based on the Ozone Transport Commission (OTC) model rule. The OTC developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing those model rules. The OTC AIM coatings model rule was based on the existing rules developed by the California Air Resources Board, which were analyzed and modified by the OTC workgroup to address VOC reduction needs in the Ozone Transport Region (OTR).

II. Summary of SIP Revision

The Northern Virginia Area includes the counties of Arlington, Fairfax, Loudon, Prince William; and cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park.

The Virginia AIM Rule applies to any person who supplies, sells, offers for sale, or manufactures any AIM coating for the use in Northern Virginia Area; as well as a person who applies or solicits the application of any AIM coating within the Northern Virginia Area. The rule does not apply to the following: (1) Any AIM coating that is sold or manufactured for use outside of the Northern Virginia Area, or for shipment to other manufacturers for reformulation or repackaging; (2) any aerosol coating product; or (3) any architectural coating that is sold in a container with a volume of one liter (1.057 quarts) or less. The rule sets specific VOC content limits, in grams per liter, for AIM coating categories with a compliance date of January 1, 2005. The rule contains administrative requirements for labeling and reporting. There are a number of test methods that would be used to demonstrate compliance with this rule. Some of these test methods include those promulgated by EPA and published by the South Coast and Bay Area Air Quality Management Districts of California, as well as the American Society for Testing and Materials. The test methods used to test coatings must be the most current approved method at the time testing is performed.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "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 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.

III. Proposed Action

EPA is proposing to approve the Virginia SIP revision submitted on February 23, 2004, for VOC emission standards for AIM coatings in the Northern Virginia Area (Rule 4-49), and also the amendments and additions to 9 VAC 5-20-21. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the

Administrator certifies that this proposed 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 proposes to approve 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 proposed rule also does 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), nor will it 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), because it merely proposes to approve 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 proposed rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by

examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule pertaining to Virginia's AIM 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 27, 2004.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 04-12775 Filed 6-4-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 295-0441b; FRL-7667-9]

Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). The GBUAPCD revisions concern the emission of particulate matter (PM-10) from open fires and incinerator burning. The VCAPCD revisions concern the emission of particulate matter (PM-10) from open burning. We are proposing to approve local rules that administer regulations and regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 7, 2004.

ADDRESSES: Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to steckel.andrew@epa.gov, or