

Dated: November 21, 2011.

**L.L. Fagan,**

*Captain, U.S. Coast Guard, Captain of the Port New York.*

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**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2011-0796, FRL-9504-1]

### Approval and Promulgation of Implementation Plans; New York State Ozone Implementation Plan Revision

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a proposed revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The proposed SIP revision consists of amendments to title 6 of the New York Codes, Rules and Regulations part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers," part 234, "Graphic Arts," and part 241, "Asphalt Pavement and Asphalt Based Surface Coating." The intended effect of this action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain the national ambient air quality standards for ozone.

**DATES:** Comments must be received on or before January 11, 2012.

**ADDRESSES:** Submit your comments, identified by Docket Number EPA-R02-OAR-2011-0796, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *Email*: [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov)
- *Fax*: (212) 637-3901
- *Mail*: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.
- *Hand Delivery*: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

**Instructions:** Direct your comments to Docket No. EPA-R02-OAR-2011-0796. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of—encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber ([wieber.kirk@epa.gov](mailto:wieber.kirk@epa.gov)), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381.

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#### I. What is required by the Clean Air Act (Act) and how does it apply to New York?

##### A. What is the history and time frame for State Implementation Plan (SIP) submissions?

In 1997, EPA revised the health-based national ambient air quality standards (NAAQS or standard) for ozone, setting it at 0.08 parts per million averaged over an 8-hour period. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23858), EPA finalized its attainment/nonattainment designations for areas across the country

with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. The three 8-hour ozone moderate nonattainment areas located in New York State are: The New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area; the Poughkeepsie nonattainment area; and the Jefferson County nonattainment area. The New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. This is collectively referred to as the New York City Metropolitan Area or NYMA. The Poughkeepsie nonattainment area is composed of Dutchess, Orange and Putnam counties. On December 7, 2009 (74 FR 63993), EPA determined that the Poughkeepsie area attained the 8-hour ozone standard and on March 25, 2008 (73 FR 15672) EPA determined that Jefferson County attained the 8-hour ozone standard.

These designations triggered the Act's requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit a demonstration of attainment. To assist states in meeting the Act's requirements for ozone, EPA released an 8-hour ozone implementation rule in two phases. EPA's Phase 1 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951) and referred to as the Phase 1 Rule, specifies that states must submit these attainment demonstrations to EPA by no later than three years from the effective date of designation—that is, submit them by June 15, 2007.<sup>1</sup>

#### *B. What are the moderate area requirements?*

On November 29, 2005, EPA published Phase 2 of the 8-hour ozone implementation rule (70 FR 71612), referred to as the Phase 2 Rule, which addressed the control and state plan obligations that apply to areas designated nonattainment for the 8-hour NAAQS. Among other things, the Phase 1 and Phase 2 Rules outline the SIP requirements and deadlines for various

requirements in areas designated as moderate nonattainment. For such areas, reasonably available control technology (RACT) plans were due by September 2006 (40 CFR 51.912(a)(2)).

Both rules require that modeling and attainment demonstrations, reasonable further progress plans, reasonably available control measure (RACM) analysis, projection year emission inventories, motor vehicle emissions budgets and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a)).

The Ozone Transport Commission (OTC) developed recommended control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing these model rules. These model rules were designed for use by states in Ozone Transport Region to develop their own regulations to achieve additional emission reductions to close emission shortfalls.

#### **II. What was included in New York's submittals?**

On August 19, 2010 and December 15, 2010, the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA proposed revisions to the SIP, which included state adopted revisions to three regulations contained in Title 6 of the New York Code of Rules and Regulations (6 NYCRR) part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers," part 234, "Graphic Arts," and Part 241, "Asphalt Pavement and Asphalt Based Surface Coating" with effective dates of September 30, 2010, July 8, 2010 and January 1, 2011, respectively. These revisions are applicable statewide and will therefore provide volatile organic compound (VOC) emission reductions statewide and will address, in part, attainment of the 1997 8-hour ozone standard in the NYMA and towards meeting the RACT and RACM requirements.

#### **III. What is EPA's evaluation of Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers?"**

##### *A. Background*

The OTC states developed a Model Rule entitled "OTC Model Rule for Adhesives and Sealants," dated 2006, which was based on the 1998 California Air Resources Board RACT determination. This RACT determination applied to both the manufacture and use of adhesives, sealants, adhesive primers or sealant primers, in both industrial/manufacturing facilities and in the field.

California air districts used this determination to develop regulations for this category. The EPA addressed this source category with a Control Techniques Guideline (CTG) document for Miscellaneous Industrial Adhesives dated September 2008. This CTG was developed in response to the Section 183(e) requirement for EPA to study and regulate consumer and commercial products included in EPA's March 23, 1995 Report to Congress, "Study of Volatile Organic Compound Emissions from Consumer and Commercial Products—Comprehensive Emissions Inventory," (EPA-4531R-94-006(b)). See 60 FR 15264 (March 23, 1995). The section 183(e) miscellaneous industrial adhesives category was limited to adhesives and adhesive primers used in industrial/manufacturing operations and did not include products applied in the field. Accordingly, the OTC Model Rule and state efforts in developing individual regulations preceded EPA's CTG for this source category and were broader in applicability.

##### *B. What are the requirements of Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers?"*

The revisions to part 228 are based on the 2006 OTC model rule for commercial and industrial adhesives and sealants, which, in turn, is based on the RACT and best available retrofit control technology determination developed in 1998 by the California Air Resources Board. In addition, the revised rule incorporates EPA's recommendations contained in the CTG document released in 2008 entitled, "Control Technique Guidelines for Miscellaneous Industrial Adhesives" (EPA 453/R-08-005), including adhesive application methods, and work practices for adhesive-related handling activities and cleaning materials. The revisions along with the retained provisions to Part 228 include the following:

- Regulation of the application of commercial and industrial adhesives, sealants, adhesive primers and sealant primers by providing options for applicators either to use a product with a VOC content equal to or less than a specified limit or to use add-on controls;
- Work practices for mixing and handling operations for adhesives, thinners and adhesive-related waste materials;
- Establishment of a VOC limit for surface preparation solvents;
- Establishment of an alternative add-on control system requirement of at least 85 percent overall control

<sup>1</sup> On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit (the Court) vacated the Phase 1 Rule. *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006). Subsequently, in *South Coast Air Quality Management Dist. v. EPA*, 489 F.3d 1295 (DC Cir. 2007), in response to several petitions for rehearing, the Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. The court upheld the portions of the Phase 1 Rule relating to EPA's classification system under subpart 2. The portions of the rule that were vacated do not affect this proposed action.

efficiency (capture and destruction efficiency), by weight;

- VOC containing materials to be stored or disposed of in closed containers;
- Prohibition of the sale of any commercial or industrial adhesive, sealant, adhesive primer or sealant primer that exceeds the VOC content limits listed in the rule;
- Manufacturers to label containers with the maximum VOC content as supplied, as well as the maximum VOC content on an as-applied basis when used in accordance with the manufacturer's recommendations regarding thinning, reducing, or mixing with any other VOC containing material;
- Prohibition of the specification of any commercial or industrial adhesive, sealant or primer that violates the provisions of the rule; and
- An allowance for process-specific RACT determinations that shall be submitted to EPA for review and approval as SIP revisions.

#### C. What is EPA's evaluation?

Part 228 contains the required elements for a federally enforceable rule: emission limitations, compliance procedures and test methods, compliance dates and record keeping provisions.

In contrast to the CTG, part 228 is applicable to all stationary sources including those applications that occur outside of the factory setting— that is, applied in the field. In addition, it includes provisions that apply to the selling, supplying, offering for sale or manufacture for sale in New York of adhesives, sealants, adhesive primers and sealant primers, along with container labeling requirements and product registrations. The VOC content restrictions for these products apply to both their manufacture and application. Stationary sources also have the option of using add-on control equipment provided it achieves 85 percent control. Part 228 also regulates the VOC content/vapor pressure of surface-preparation and clean-up solvents for which the CTG did not make recommendations other than including work practices.

EPA recommends that states evaluate RACT, as required by section 182(b) when implementing a revised 8-hour ozone standard and that they review the VOC content limits for wood adhesives. This category of adhesives is included in the CTG recommended VOC emission limits. Overall, part 228: (1) Regulates the same adhesives and adhesive primers as the CTG with the addition of regulating sealants and sealant primers, (2) applies to additional stationary

sources, and (3) provides for similar exemptions as the CTG recommends.

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that part 228 is as effective in regulating this source category as the CTG and proposes to approve it as part of the SIP and as meeting the requirement to adopt a RACT rule for the Miscellaneous Industrial Adhesives CTG category.

#### IV. What is EPA's evaluation of Part 234, "Graphic Arts?"

##### A. Background

In September 2006, EPA issued two CTG documents, one for Offset Lithographic Printing and Letterpress Printing and a second for Flexible Package Printing. These CTG's were developed in response to the section 183(e) requirement for EPA to study and regulate consumer and commercial products included in EPA's March 23, 1995 Report to Congress, "Study of Volatile Organic Compound Emissions from Consumer and Commercial Products—Comprehensive Emissions Inventory." The first CTG addresses both the offset lithographic printing industry and the letterpress printing industry. Although offset lithographic printing and letterpress printing are two distinct product categories on the section 183(e) list, they have many similarities in the types of inks and cleaning materials used, the sources of VOC emissions, and the controls available to address those emissions. EPA therefore addresses both categories in this CTG. This CTG provides control recommendations for reducing VOC emissions stemming from the use of fountain solutions, cleaning materials and inks in offset lithographic printing and cleaning materials and inks in letterpress printing.

The second CTG provides control recommendations for reducing VOC emissions from inks, coatings, adhesives and cleaning materials used in flexible package printing operations.

##### B. What are the requirements of Part 234, "Graphic Arts?"

The revisions to part 234 expand the applicability to part 234 to include letterpress printing and establish RACT requirements on facilities that engage in flexographic, offset lithographic and rotogravure printing. They also impose requirements for graphic arts coatings and adhesives and for cleaning solutions used in letterpress and offset lithographic printing. The revised part 234 includes the following:

- Several new definitions, including new definitions for various types of printing equipment and processes, control equipment, and cleaning materials.

- Emission control requirements for graphic arts printing processes, which outline minimum control efficiencies for reducing the amount of VOCs emitted by graphic arts printing processes. Operators may choose to use compliant materials with low VOC content or install and operate emission control equipment.

- Testing and monitoring requirements for graphic arts facilities that choose to comply with Part 234 by installing and operating emission control equipment. Also required are continuous emission control equipment monitors that must be installed and operated on all printing process emission control equipment at graphic arts facilities.

- A prohibition of the sale or specification of any coatings, inks or adhesives that is specifically prohibited by any provision of part 234. Use or specification of such material is allowed only when part 234 compliant emission control equipment has been installed, or the material has been granted a variance by the NYSDEC. Part 234 also requires that coating, ink and adhesive vendors provide product specifications to the buyer upon request.

- Handling, storage and disposal of VOC requirements. Owners and operators of graphic arts printing processes are prohibited from storing inks, coatings, adhesives, cleaning materials, and cloths or papers that contain any amount of VOCs in open containers.

- Recordkeeping requirements. Owners and operators of graphic arts printing processes must retain purchase and use records of inks, coatings, adhesives, VOCs, solvents, fountain solutions, cleaning materials and any other information required to determine compliance with the regulation at the facility for a period of five years. Part 234 also allows NYSDEC to obtain a sample of any material containing VOC in order to determine compliance with part 234. Facilities that meet any of the exemption criteria in part 234 must retain records that demonstrate their qualification for the exemption.

- A requirement that the opacity from any emission source subject to Part 234 be no more than ten percent.

##### C. What is EPA's evaluation?

Part 234 contains the required elements for a federally enforceable rule: emission limitations, compliance procedures and test methods,

compliance dates and record keeping provisions.

In contrast to the CTGs, part 234 is generally applicable to all graphic arts facilities located in a severe ozone nonattainment area, which includes the NYMA, or to facilities that emit total actual annual VOC graphic arts emissions of three tons or more on a 12-month rolling basis, which is consistent with or more stringent than the CTG's.

#### Offset Lithographic Printing and Letterpress Printing

In addition to the general revisions to part 234, the revised section 234.3 addresses the CTG for Offset Lithographic Printing and Letterpress Printing. Subsections (b), (c) and (d) were added and require more stringent emission controls. Subsection 234.3(b) requires control equipment achieve overall removal efficiencies, *i.e.*, 90 percent if installed prior to July 8, 2010 and 95 percent if installed on or after July 8, 2010. Subsection 234.3(d) includes the VOC limits for heatset web, sheet-fed and cold-set offset lithographic printing processes. Subsection 234.3(c) limits provisions for cleaning materials to a composite vapor pressure less than 10 mm Hg (millimeters mercury) or VOC content of less than 70 percent by weight, with some exceptions. In addition, section 234.6 requires best management practices for handling, storage and disposal of VOCs, such as keeping VOC and VOC containing materials in closed containers, keeping VOC containing shop towels in closed containers, and recordkeeping requirements. These revisions are consistent with the CTG recommendations issued on October 5, 2006.

EPA evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

#### Flexible Package Printing

In addition to the general provisions of part 234, the revised subsection 234.3(a) addresses the CTG for Flexible Package Printing. Subsection 234.3(a)(1)(ii) was added and requires more stringent emission controls for publication rotogravure and other printing processes. Subsection 234.3(a)(1)(i) contains new maximum allowable VOC content limits for inks, coatings and adhesives (minus water). Section 234.6 requires best management practices (see above description). These revisions are consistent with the CTG recommendations issued on October 5, 2006.

EPA evaluated these provisions for consistency with the Act, EPA

regulations, and EPA policy and proposes to approve them.

### V. What is EPA's evaluation of Part 241, "Asphalt Pavement and Asphalt Based Surface Coating?"

#### A. Background

Asphalt paving is used to pave, seal and repair surfaces such as roads, parking lots, drives, walkways and airport runways. Asphalt paving is grouped into three general categories: hot mix, cutback, and emulsified. Hot mix asphalt paving is sometimes "cutback" (thinned) with volatile organic solvents to ensure the mix can be properly applied. Since August 21, 1983, the use of cutback asphalt during the summer months has been prohibited pursuant to the provisions of 6 NYCRR part 211, "General Prohibitions."

Previously, the maximum amount of VOCs that was allowed to be contained in asphalt was limited by the provisions of section 211.4(b). The VOC content of asphalt based surface coatings is subject to the limit established in part 205, "Architectural and Industrial Maintenance (AIM) Coatings," for the general category of flat coatings.

EPA provided guidance on the reduction of VOC from asphalt, and included cost information in their "Control of VOCs from Use of Cutback Asphalt" EPA-450/2-77-037.

#### B. What are the requirements of Part 241, "Asphalt Pavement and Asphalt Based Surface Coating?"

NYSDEC revised 6 NYCRR parts 205 and 211 and promulgated a new part 241 that will provide VOC emission reductions from asphalt pavement and asphalt based surface coatings as part of the effort to reduce ozone pollution in the State and reach attainment of the 8-hour ozone NAAQS. Part 241 is applicable statewide to any entity that applies, supplies, sells, offers for sale or manufactures any asphalt pavement and any asphalt based surface coatings.

Part 241 contains all of the regulatory provisions applicable to asphalt pavements and asphalt based surface coatings. The revisions to VOC emission limits from asphalt pavement and asphalt based surface coatings are expected to have a minimal impact on consumers since formulations already exist that meet the New York revised limits.

#### C. What is EPA's evaluation?

Part 241 contains the regulatory provisions applicable to asphalt pavements and asphalt based surface coatings. These provisions were previously regulated under parts 205

and 211. New York revised these two rules by removing the asphalt provisions and moving them into new rule part 241.

New York removed the seasonal limit that allowed the use of cutback asphalt from October 16th to May 1st. Part 241 only allows the use of cutback asphalt in two circumstances: when the asphalt is used in the production of long-life stockpile material for pavement patching and repair and when the asphalt is used as a penetrating prime coat for the purpose of preparing a surface to receive asphalt pavement.

New York included a VOC content limit in Part 241 for asphalt surface coatings. No asphalt based surface coating may be applied, sold, offered for sale, or manufactured if it contains more than 100 grams of VOC per liter. This is consistent with the limit that was previously included in part 205.

Part 241 also includes limits for emulsified asphalt. No emulsified asphalt, as classified under ASTM International standard specifications D 977 or D 2397 may be applied, sold, offered for sale, or manufactured that contains oil distillate, as determined by ASTM International standard test method D 6997, in amounts that exceed the following limits (milliliters of oil distillate per 200 gram sample):

(a) Three milliliters for ASTM grades RS-1, SS-1, SS-1h, CRS-1, CSS-1, and CSS-1h;

(b) Five milliliters for ASTM grades RS-2, CRS-2, and HFMS-2;

(c) Sixteen milliliters for ASTM grades MS-2, HFMS-2 and HFMS-2h; and

(d) Twenty milliliters for ASTM grades CMS-2 and CMS-2h.

Similar limits were previously included in part 211 but they were expressed as VOC content limits in percent by weight. The revised limits included in part 241 are approximately 17–25 percent more stringent than what was previously included in part 211.

EPA notes that while the revised limits in part 241 are more stringent than the previous limits included in part 211, the States of New Jersey, Delaware and Connecticut have adopted emission limits more stringent than part 241, specifically during the ozone season months. EPA recommends that when New York evaluates RACT, as is required by section 182(b) when implementing a revised 8-hour ozone standard, that New York consider more stringent asphalt paving limits in line with those adopted by the neighboring states.

EPA evaluated the provisions of part 241 for consistency with the Act, EPA

regulations, and EPA policy and proposes to approve them.

#### VI. What is EPA's conclusion?

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA proposes that the revisions made to title 6 of the New York Code of Rules and Regulations (6 NYCRR) part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers," part 234, "Graphic Arts," and new part 241, "Asphalt Pavement and Asphalt Based Surface Coating," with effective dates of September 30, 2010, July 8, 2010 and January 1, 2011, respectively, meet the SIP requirements of the Act and fulfill the recommended controls identified in the applicable CTGs. EPA is proposing to approve these revisions and is also proposing to approve the revisions made to 6 NYCRR Part 205, "Architectural and Industrial Maintenance (AIM) Coatings" and Part 211, "General Prohibitions," both effective January 1, 2011, to avoid redundancy and conflict of the asphalt paving and coating provisions included in new part 241.

#### VII. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 22, 2011.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R03-OAR-2011-0872; FRL-9504-8]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; General Conformity Requirements for Federal Agencies Applicable to Federal Actions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The SIP revision consists of a regulation revision adopted by Virginia for the purpose of

incorporating Federal general conformity requirements revisions promulgated in July of 2006 and April of 2010. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by January 11, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2011-0872, by one of the following methods:

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

B. *Email:* [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail:* EPA-R03-OAR-2011-0872, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2011-0872. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>