

**LIBRARY OF CONGRESS****Copyright Office****37 CFR Parts 202, 203, and 211**

[Docket No. 2011-4]

**Registration and Recordation Program****AGENCY:** Copyright Office, Library of Congress.**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Copyright Office is making non-substantive amendments to its regulations to reflect a reorganization that has moved the Recordation function from the Visual Arts and Recordation Division of the Registration and Recordation Program to the Information and Records Division. As a result of this reorganization, the name of the Registration and Recordation Program has been changed to the Registration Program.

**DATES:** *Effective Date:* May 13, 2011.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Scheffler, Chief Operating Officer, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) (707-8350). Telefax: (202) (707-8366).

**SUPPLEMENTARY INFORMATION:** On February 13, 2011, the Copyright Office implemented a reorganization, commenced in December 2010, that moved the recordation function from the Visual Arts and Recordation Division of the Registration and Recordation Program to the Information and Records Division. As a result of the reorganization, the Registration and Recordation Program has been renamed the Registration Program. The Documents Recordation Team, which was part of the Visual Arts Division of the Registration and Recordation Program, has been renamed the Recordation Section of the Information and Records Division.

The Recordation Section processes the recordation of transfers of copyright ownership and other documents pertaining to a copyright under section 205 of the Copyright Act, the recordation of notices of termination of transfers and licenses under sections 203 and 304(c) and (d) of the Copyright Act, and designations of agents of online service providers to receive notification of claims of infringement under section 512(c) of the Copyright Act.

This reorganization better aligns and leverages the skill sets of Recordation staff with similar skill sets required of staff in the Records Research and Certification Section of the Information

and Records Division. The Office believes that the reorganization will result in timelier processing of recordations and make the public record available in a more timely fashion.

Parts 202, 203, and 211 of the Copyright Office Regulations currently refer to the Registration and Recordation Program. In order to reflect the change in the name of the Program, the provisions of those parts of the regulations that refer to the Program are being amended to refer to the Registration Program. In addition, a typographical error in § 203.3(b)(2) is being corrected.

**List of Subjects***37 CFR Part 202*

Copyright registration.

*37 CFR Part 203*

Freedom of Information Act.

*37 CFR Part 211*

Mask work.

**Final Rule**

Accordingly, 37 CFR Chapter II is amended by making the following technical corrections and amendments:

**PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT**

■ 1. The authority citation for part 202 continues to read as follows:

**Authority:** 17 U.S.C. 408(f), 702.**§ 202.5 [Amended]**

■ 2. Amend § 202.5 by removing “Registration and Recordation Program” each place it appears and adding in its place “Registration Program”.

**§ 202.12 [Amended]**

■ 3. Amend § 202.12(c)(4)(vi) by removing “Registration and Recordation Program” and adding in its place “Registration Program”.

**§ 202.19 [Amended]**

■ 4. Amend § 202.19(e)(3) by removing “Registration and Recordation Program” and adding in its place “Registration Program”.

**§ 202.20 [Amended]**

■ 5. Amend § 202.20 by removing “Registration and Recordation Program” each place it appears and adding in its place “Registration Program”.

**§ 202.21 [Amended]**

■ 6. Amend § 202.21(h) introductory text by removing “Registration and Recordation Program” and adding in its place “Registration Program”.

**PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES**

■ 7. The authority citation for part 203 continues to read as follows:

**Authority:** 17 U.S.C. 702, 5 U.S.C. 552.**§ 203.3 [Amended]**

■ 8. Amend § 203.3 as follows:  
 ■ a. In paragraphs (b)(2) and (3) by removing “Registration and Recordation Program” and adding in its place “Registration Program”; and  
 ■ b. In paragraph (b)(2), by removing “coyrightable” and adding “copyrightable” in its place.

**PART 211—MASK WORK PROTECTION**

■ 9. The authority citation for part 211 continues to read as follows:

**Authority:** 17 U.S.C. 702, 908.**§ 211.5 [Amended]**

■ 10. Amend § 211.5(d) by removing “Registration and Recordation Program” and adding in its place “Registration Program”.

Dated: May 4, 2011.

**Maria A. Pallante,**  
*Acting Register of Copyrights.*

Approved by:

**James H. Billington,**  
*The Librarian of Congress.*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R03-OAR-2010-1028; FRL-9305-2]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality (VADEQ) on October 27, 2010. This revision pertains to EPA’s greenhouse gas (GHG) Prevention of Significant Deterioration (PSD) permitting provisions as promulgated on June 3, 2010 in the Tailoring Rule. The SIP revision modifies Virginia’s PSD program to

establish appropriate emission thresholds for determining which new stationary sources and modifications become subject to Virginia's PSD permitting requirements for their GHG emissions. EPA is approving Virginia's SIP revision because the Agency has determined that this SIP revision is in accordance with the CAA and Federal regulations regarding PSD permitting for GHGs.

**DATES:** This final rule is effective on June 13, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-1028. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** David Talley, (215) 814-2117, or by e-mail at [talley.david@epa.gov](mailto:talley.david@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On January 12, 2011 (76 FR 2070), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of a new Chapter 85 of 9 VAC 5. The formal SIP revision was submitted by the VADEQ on October 27, 2010.

**II. Summary of Virginia's SIP Revision**

On October 27, 2010, VADEQ submitted a revision to EPA for approval into the Virginia SIP. This SIP revision would establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Virginia's PSD permitting requirements for GHG emissions. Final approval of Virginia's October 27, 2010, SIP revision puts in place the GHG emission thresholds for

PSD applicability set forth in EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule—Final Rule" (the Tailoring Rule, 75 FR 31514, June 3, 2010) ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements.

**III. What is the background for today's proposed action?**

This section briefly summarizes EPA's recent GHG-related actions that provide the background for today's final action. More detailed discussions of the background are found in the preambles for those actions. In particular, the background is contained in what we call the GHG PSD SIP Narrowing Rule,<sup>1</sup> and in the preambles to the actions cited in that rule.

*A. GHG-Related Actions*

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action to approve Virginia's October 27, 2010 SIP revision. Four of these actions include, as they are commonly called, the Endangerment Finding and Cause or Contribute Finding, which EPA issued in a single final action,<sup>2</sup> the Johnson Memo Reconsideration,<sup>3</sup> the Light-Duty Vehicle Rule,<sup>4</sup> and the Tailoring Rule.<sup>5</sup> Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

<sup>1</sup>Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas-Emitting Sources in State Implementation Plans; Final Rule. 75 FR 82536 (December 30, 2010).

<sup>2</sup>Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act. 74 FR 66496 (December 15, 2009).

<sup>3</sup>Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs. 75 FR 17004 (April 2, 2010).

<sup>4</sup>Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule. 75 FR 25324 (May 7, 2010).

<sup>5</sup>Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514 (June 3, 2010).

The PSD permitting program is implemented through the SIP, and so in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call and, for some of these states, a Federal Implementation Plan (FIP).<sup>6</sup> Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year (tpy) of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the GHG PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the "error correction" provisions of CAA section 110(k)(6).

*B. Virginia's Actions*

On July 28, 2010, Virginia provided a letter to EPA, in accordance with an EPA request to all states in the Tailoring Rule, with confirmation that the Commonwealth of Virginia has the authority to regulate GHGs in its PSD program. The letter also confirmed that current Virginia rules require regulating GHGs at the 100/250 tpy threshold that generally applies to all air pollutants subject to PSD and that is provided under the CAA PSD provisions, section 169(1), rather than at the higher thresholds set in the Tailoring Rule. (See the docket for this rulemaking for a copy of Virginia's letter.)

In the SIP Narrowing Rule, published on December 30, 2010, EPA withdrew

<sup>6</sup>Specifically, by notice dated December 13, 2010, EPA finalized a SIP Call that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call," 75 FR 77698 (Dec. 13, 2010). EPA has begun making findings of failure to submit that would apply in any state unable to submit the required SIP revision by its deadline, and finalizing FIPs for such states. See, e.g., "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases," 75 FR 81874 (December 29, 2010); "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," 75 FR 82246 (December 30, 2010). Because Virginia's SIP already authorizes Virginia to regulate GHGs, Virginia is not subject to the proposed SIP Call or FIP.

its approval of Virginia's SIP—among other SIPs—to the extent that the SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.<sup>7</sup> As a result, Virginia's current federally approved SIP provides the state with authority to apply PSD to GHG-emitting sources and requires new and modified sources to receive a PSD permit based on GHG emissions, but only if those sources emit at or above the Tailoring Rule thresholds.

Virginia's October 27, 2010 SIP revision amends its SIP to put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule. EPA's approval of Virginia's October 27, 2010 incorporates these adopted by the Commonwealth into the Federally-approved SIP. Doing so will clarify the applicable thresholds in the Virginia SIP.

The basis for this SIP revision is that limiting PSD applicability to GHG sources which emit at or above the higher thresholds in the Tailoring Rule is consistent with the SIP provisions that provide required assurances of adequate resources, and thereby addresses the flaw in the SIP that led to the SIP Narrowing Rule. Specifically, CAA section 110(a)(2)(E) includes as a requirement for SIP approval that States provide "necessary assurances that the State \* \* \* will have adequate personnel [and] funding \* \* \* to carry out such [SIP]." In the Tailoring Rule, EPA established higher thresholds for PSD applicability to GHG-emitting sources on grounds that the states generally did not have adequate resources to apply PSD to GHG-emitting sources below the Tailoring Rule thresholds,<sup>8</sup> and no State, including Virginia, asserted that it did have adequate resources to do so.<sup>9</sup> In the SIP Narrowing Rule, EPA found that the affected states, including Virginia, had a flaw in their SIP at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIP.<sup>10</sup> Accordingly, for each affected state, including Virginia, EPA concluded that EPA's action in approving the SIP was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting

sources below the Tailoring Rule thresholds.<sup>11</sup> EPA recommended that States adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) assuring that under State law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the Federally approved SIP by clarifying that the SIP applies to only sources at or above the Tailoring Rule thresholds.<sup>12</sup>

#### IV. EPA's Response to Comments Received on the Proposed Action

EPA received a single set of relevant comments on its January 12, 2011 (76 FR 2070) proposed action to approve revisions to Virginia SIP. These comments, provided by the Air Permitting Forum (hereinafter referred to as "the Commenter"), raised concerns with regard to EPA's January 12, 2011 proposed action. A full set of these comments is provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

Generally, the adverse comments fall into four categories. First, the Commenter asserts that PSD requirements cannot be triggered by GHGs. Second, the Commenter expresses concerns regarding "EPA's statement that it may narrow its prior SIP approvals" to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under Federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter explains that this SIP approval narrowing action would be "illegal."<sup>13</sup> Third, the Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, the Commenter states: "If EPA proceeds with this action, it must condition approval on the continued validity of its determination that PSD can be triggered by GHGs." EPA's response to these four categories of comments is provided below.

*Comment 1:* The Commenter asserts that PSD requirements cannot be triggered by GHGs. In its letter, the Commenter states: "[n]o area in the Commonwealth of Virginia has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard

(NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting requirements." The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings. The Commenter attached those previously submitted comments to its comments on the proposed rulemaking related to this action. Finally, the Commenter states that "EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow Virginia to rescind that portion of its rules that would allow GHGs to trigger PSD."

*Response 1:* EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants, in earlier national rulemakings concerning the PSD program, and EPA has not reopened that issue in this rulemaking. Accordingly, these comments are not relevant to this rulemaking. In addition, EPA has explained in detail, in recent rulemakings concerning GHG PSD requirements, its reasons for disagreeing with these comments. For convenience, we briefly summarize these reasons here, although, again, we have not reopened this issue in this rulemaking.

In an August 7, 1980 rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a "major stationary source" was one that emitted "any air pollutant subject to regulation under the Act" at or above the specified numerical thresholds; and defined a "major modification," in general, as a physical or operational change that increased emissions of "any pollutant subject to regulation under the Act" by more than an amount that EPA variously termed as *de minimis* or significant. In addition, in EPA's NSR Reform rule at 67 FR 80186 and 67 FR 80240 (December 31, 2002), EPA added to the PSD regulations the new definition of "regulated NSR pollutant" [currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)], noted that EPA added this term based on a request from a commenter to "clarify which pollutants are covered under the PSD program" and explained that in addition to criteria pollutants for which a NAAQS has been established, "[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant." *Id.* at 67 FR 80240 and 67 FR 80264. Among other things, the definition of "regulated NSR pollutant" includes "[a]ny pollutant that otherwise is subject to

<sup>7</sup> "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse-Gas Emitting Sources in State Implementation Plans; Final Rule." 75 FR 82536 (December 30, 2010).

<sup>8</sup> Tailoring Rule, 75 FR 31517/1.

<sup>9</sup> SIP Narrowing Rule, 75 FR 82540/2.

<sup>10</sup> *Id.* at 82542/3.

<sup>11</sup> *Id.* at 82544/1.

<sup>12</sup> *Id.* at 82540/2.

<sup>13</sup> Although the Commenter discussed only the proposal to narrow, the final PSD SIP Narrowing Rule had been issued prior to when the commenter submitted its comments. EPA assumes these comments are intended to apply to the final PSD SIP Narrowing Rule.

regulation under the Act.” See 40 CFR 52.21(b)(50)(d)(iv); see also 40 CFR 51.166(a)(49)(iv).

In any event, EPA disagrees with the Commenter’s underlying premise that PSD requirements were not triggered for GHGs when GHGs became subject to regulation as of January 2, 2011. As just noted, this has been well-established and discussed in connection with prior EPA actions, including, most recently, the Johnson Memo Reconsideration and the Tailoring Rule. In addition, EPA’s January 12, 2011 proposed rulemaking notice provides the general basis for the Agency’s rationale that GHGs, while not a NAAQS pollutant, can trigger PSD permitting requirements. The January 12, 2011 notice also refers the reader to the preamble to the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS and concluded that such an interpretation of the Act would contravene Congress’s unambiguous intent. See 75 FR 31560–31562. Further discussion of EPA’s rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response to Comments document (“Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA’s Response to Public Comments”), pp. 34–41; and in EPA’s response to motions for a stay filed in the litigation concerning those rules [“EPA’s Response to Motions for Stay,” *Coalition for Responsible Regulation v. EPA*, D.C. Cir. No. 09–1322 (and consolidated cases)], at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today’s action.

*Comment 2:* The Commenter expresses concerns regarding the legality of narrowing prior SIP approvals if states cannot interpret their regulations to include the Tailoring Rule thresholds within the phrase “subject to regulation.”

*Response 2:* While EPA does not agree with the Commenter’s assertion that the narrowing approach that EPA proposed in the Tailoring Rule and finalized in the PSD SIP Narrowing Rule is illegal, the validity of the narrowing approach is irrelevant to the action that EPA is today taking for Virginia’s October 27, 2010 SIP revision. EPA did not propose to narrow its approval of Virginia’s SIP as part of its January 12, 2011 proposed action, and in today’s final action, EPA is acting to approve a SIP revision submitted by Virginia and is not otherwise narrowing its approval of prior submitted and approved

provisions in the Virginia SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

*Comment 3:* The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory requirements and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), the Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Virginia, much less nationwide.

*Response 3:* EPA disagrees with the Commenter’s statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA’s proposed approval of Virginia’s October 27, 2010 SIP revision, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA’s approval, in and of itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, this SIP approval will not have a significant economic impact on a substantial number of small entities, beyond that which would be required by the state law requirements, so a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action 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 mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. Furthermore, this action does not have Federalism implications that would make Executive Order 13132 applicable, because it 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 CAA. Finally, regarding the Commenter’s assertion that EPA has “never analyzed the costs and benefits of triggering PSD for stationary sources in Virginia, much less nationwide”, this comment is not relevant to the current action because this action is not triggering GHG PSD requirements.

Today’s rule is a routine approval of a SIP revision, which approves state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD programs, these comments are irrelevant to the approval of state law in today’s action. However, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled “VII. *Comments on Statutory and Executive Order Reviews*,” 75 FR 31601–31603, and “VI. *What are the economic impacts of the final rule?*,” 75 FR 31595–31601. EPA also notes that today’s action does not in-and-of itself trigger the regulation of GHGs. To the contrary, GHGs are already being regulated nationally, and PSD permitting for GHG emissions by Virginia is already authorized under the existing SIP. Today’s action simply puts in place the GHG emission thresholds for PSD applicability set forth in EPA’s Tailoring Rule, thereby ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements.

*Comment 4:* The Commenter states that “[i]f EPA proceeds with this action, it must condition approval on the continued validity of its determination that PSD can be triggered by GHGs.” Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the D.C. Circuit. Specifically, regarding EPA’s determination that PSD can be triggered by GHGs or is applicable to GHGs, the Commenter mentions that “EPA should explicitly state in any final rule that the continued enforceability of these provisions in the Virginia SIP is limited to the extent to which the Federal requirements remain enforceable.”

*Response 4:* EPA believes that it is most appropriate to take actions that are consistent with the Federal regulations that are in place at the time the action is being taken. To the extent that any changes to Federal regulations related to today’s action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA’s regulations. EPA notes that in an order dated December 10, 2010, the United States Court of Appeals for the D.C. Circuit denied motions to stay EPA’s regulatory actions related to GHGs. *Coalition for Responsible Regulation, Inc. v. EPA*, Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op.

at 3 (D.C. Cir. December 10, 2010) (order denying stay motions).

### V. 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 Sec. 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 PSD program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities. EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

### VI. Final Action

EPA is approving 9 VAC5 Chapter 85 as a revision to the Virginia SIP. EPA has determined that this SIP submittal is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

As discussed above, in the PSD SIP Narrowing Rule, EPA both narrowed its prior approval of a number of SIPs and asked that each affected state withdraw from EPA consideration the part of its SIP that is no longer approved, and stated that approval of a SIP revision incorporating the Tailoring Rule thresholds into a SIP would count as removing these no-longer-approved provisions. Today's SIP revision approval accomplishes exactly this. Because EPA is approving Virginia's changes to its air quality regulations to incorporate appropriate thresholds for GHG permitting applicability into Virginia's SIP, then paragraph (t) in § 52.2423 of 40 CFR part 52, as included in EPA's PSD SIP Narrowing Rule—

which codifies EPA's limiting its approval of Virginia's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds—is no longer necessary. In today's action, EPA is also amending Section 52.2423 of 40 CFR part 52 to remove this unnecessary regulatory language; the removal of this now-extraneous language is ministerial in nature.

### VII. Statutory and Executive Order Reviews

#### A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 2011. Filing a petition for reconsideration by the Administrator of this final rule to approve Virginia’s October 27, 2010 SIP revision does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to greenhouse gas permitting in Virginia may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by

reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: April 25, 2011.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

40 CFR Part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

**Subpart VV—Virginia**

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding entries for Chapter 85, Sections 5–85–10, 5–85–40, 5–85–50; 5–85–60, and 5–85–70 after existing section 5–80–2240 to read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES**

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * * * *				
<b>9 VAC 5, Chapter 85 Permits for Stationary Sources of Pollutants Subject to Regulation</b>				
<b>Part I Applicability</b>				
5–85–10 .....	Applicability .....	1/2/11	5/13/11 [Insert page number where the document begins].	
<b>Part III Prevention of Significant Deterioration Permit Actions</b>				
5–85–40 .....	Prevention of Significant Deterioration Area Permit Actions.	1/2/11	5/13/11 [Insert page number where the document begins].	
5–85–50 .....	Definitions .....	1/2/11	5/13/11 [Insert page number where the document begins].	
<b>Part IV State Operating Permit Actions</b>				
5–85–60 .....	State Operating Permit Actions .....	1/2/11	5/13/11 [Insert page number where the document begins].	
5–85–70 .....	Definitions .....	1/2/11	5/13/11 [Insert page number where the document begins].	
* * * * *				

\* \* \* \* \*

■ 3. In § 52.2423, paragraph (t) is removed.

[FR Doc. 2011-11710 Filed 5-12-11; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2010-0999; FRL-9304-8]

### Approval and Promulgation of Air Quality Implementation Plans; Indiana

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a request submitted by the Indiana Department of Environmental Management (IDEM) on November 24, 2010, to revise the Indiana State Implementation Plan (SIP). The submission revises the Indiana Administrative Code (IAC) by amending and updating the definition of "References to the Code of Federal Regulations," to refer to the 2009 edition. The submission also makes a minor revision to the definition of "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds" by deleting an outdated **Federal Register** citation.

**DATES:** This rule is effective on July 12, 2011, unless EPA receives adverse written comments by June 13, 2011. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2010-0999 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).
3. *Fax:* (312) 408-2279.
4. *Mail:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for

deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2010-0999. 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 e-mail. 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 e-mail comment directly to EPA without going through <http://www.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.

**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 U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886-6031 before visiting the Region 5 office.

### FOR FURTHER INFORMATION CONTACT:

Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, [hatten.charles@epa.gov](mailto:hatten.charles@epa.gov).

### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background for this action?
  - A. When did the State submit the requested SIP revision to EPA?
  - B. Did Indiana hold public hearings on this SIP revision?
- II. What revision did the State request be incorporated into the SIP?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

#### I. What is the background for this action?

##### A. When did the State submit the requested SIP revision to EPA?

IDEM submitted the SIP revision on November 24, 2010.

##### B. Did Indiana hold public hearing on this SIP revision?

IDEM held a public hearing on June 2, 2010. IDEM did not receive any public comments concerning the SIP revision.

#### II. What revision did the State request be incorporated into the SIP?

The State has requested that SIP revision include: (1) updated references to the CFR at 326 IAC 1-1-3, and (2) the deletion of a reference to **Federal Register** citation at 326 IAC 1-2-48 to clarify that the compounds dimethyl carbonate and propylene carbonate are excluded from the definition of volatile organic compound (VOC).

*Rule 326 IAC 1-1-3, definition of "References to the Code of Federal Regulations."* IDEM updated the reference to the CFR in 326 IAC 1-1-3 from the 2008 edition to the 2009 edition. This is solely an administrative change that allows Indiana to reference a more current version of the CFR. By amending 326 IAC 1-1-3 to reference the most current version of the CFR, Title 326 of the IAC will be consistent and current with Federal regulations.

*Rule 326 IAC 1-2-48, definition of "Nonphotochemically reactive hydrocarbons" or "negligibly photochemically reactive compounds."* IDEM has amended 326 IAC 1-2-48 to clarify the inclusion of two additional compounds to the list of compounds that are excluded from the definition of VOC by deleting language in section