ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0407; FRL–9902–53–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of the Regulation for the National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Virginia State Implementation Plan (SIP). The revision removes Virginia's repealed regulation for the National Low Emission Vehicle (NLEV) program from the Virginia SIP. Virginia repealed its regulation in December 2011, because the NLEV program was superseded by more stringent Federal Tier 2 passenger car and light-duty truck standards, which were promulgated by EPA on February 10, 2000. The Federal Tier 2 vehicle standards, which were implemented on a phased-in basis between model years 2004 and 2006, marked the expiration of the NLEV program, per the framework established by the NLEV program at its inception. Therefore, EPA is approving this revision to remove Virginia's repealed NLEV regulation from the Virginia SIP, in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on January 13, 2014 without further notice, unless EPA receives adverse written comment by December 16, 2013. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0407 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov*.

C. Mail: EPA–R03–OAR–2013–0407, 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–2013–0407. 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,* 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* or email. The *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,* 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, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 in *www.regulations.gov* or in hard copy 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: Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal NLEV program was a voluntary, nationwide program to control emissions from new passenger cars and light-duty trucks, for the purpose of reducing the formation of ground level ozone and other air pollution emitting by new vehicles after the program took effect. Given the need for additional reductions of ozone precursor emissions in the Ozone Transport Region (OTR), the Ozone Transport Commission (OTC) states sought additional reductions from more stringent new vehicle standards than the Federal Tier 1 vehicle program that was in place at that time. The only option for more stringent vehicle emission standards afforded to the OTC states by the CAA was adoption of Low Emission Vehicle standards developed by California (CA LEV) to meet its own unique air quality goals. The OTC pressed for adoption of CA LEV throughout the OTR, in place of Federal Tier 1 vehicle emission standards, which commenced with the 1994 model year and were then in effect in most of the OTC member states (except New York and Massachusetts, which had already opted for CA LEV standards). Faced with complying with these differing vehicle emission standards across a ''patchwork'' of states across the United States, the auto manufacturers coordinated with OTC, environmentalists, fuel providers, and EPA, among others, to develop the NLEV program.

On June 6, 1997 (62 FR 31192) and on January 7, 1998 (63 FR 926), EPA promulgated rules outlining the framework for the NLEV program. These NLEV rules allowed auto manufacturers to commit to meet tailpipe standards for passenger cars and light trucks that were more stringent than Federal Tier 1 standards that were then mandatory under authority of Title II of the CAA. The NLEV regulatory framework was voluntary in that the program took effect only after the Northeast states and auto manufacturers agreed to participate in the NLEV framework and be bound by the standards. On March 9, 1998 (63 FR 11374), EPA published a finding that the NLEV program was in effect, after the Governors of nine OTR states (Connecticut, Delaware, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, and the District of Columbia) and twenty-three U.S. market auto manufacturers agreed to participate. The NLEV framework became effective after these initial commitments, followed by incorporation of the states' participation

commitments being incorporated into each participating state's SIP.

Virginia's adopted program rules covering its participation in the NLEV program (Regulation 9 VAC 5 Chapter 200) on January 7, 1999. Virginia then submitted its adopted regulation as a SIP revision to EPA on May 27, 1999. EPA approved Virginia's revision to the SIP through a final rule published on December 28, 1999 (64 FR 72564).

In accordance with EPA's NLEV regulatory framework rule, Virginia's regulation established that the Commonwealth's participation in the NLEV program would extend until model year 2006. However, if EPA adopted Federal Tier 2 standards that were more stringent than NLEV by December 15, 2000, Virginia's rule limited participation in the NLEV program until model year 2004.

On February 10, 2000, EPA published a final rule in the **Federal Register** (65 FR 6698) adopting Federal Tier 2 standards that were more stringent than the Federal NLEV program, commencing with model year 2004. Subsequently, Virginia repealed its NLEV regulation (9 VAC5–200), in its entirety, on December 2, 2011.

II. Summary of SIP Revision

On August 1, 2013, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision serves to remove from the SIP Virginia's NLEV regulation, which was adopted by the Commonwealth in 1999. By model year 2006, the Federal NLEV program had been fully superseded by Federal Tier 2 passenger car and light-truck standards. Since the Federal Tier 2 program was designed by EPA to supersede the NLEV program and was by design more stringent with respect to control of regulated vehicle emissions than the NLEV program it replaced, there is no need for a state repealing its NLEV regulations to determine whether the removal of these provisions from the SIP will interfere with any applicable requirement concerning attainment and maintenance of any applicable National Ambient Air Quality Standard (NAAQS) under section 110(l) of the Clean Air Act.

Virginia's NLEV regulation expired with the implementation of the Federal Tier 2 vehicle standards program, and in December 2011 Virginia repealed Regulation 9 VAC 5 Chapter 200, effective June 7, 2012.

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

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

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 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 programs consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving Virginia's SIP revision to remove the now expired NLEV program from the SIP to reflect Virginia's repeal of its NLEV program regulation at the state level. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register,** EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on January 13, 2014 without further notice unless EPA receives adverse comment by December 16, 2013. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This rulemaking action to remove Virginia's NLEV program from the Virginia SIP 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: September 30, 2013.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by removing the entries for 9 VAC 5 Chapter 200 ''National Low Emission Vehicle Program'' in its entirety.

[FR Doc. 2013–27029 Filed 11–13–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0997; FRL–9901–38–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Ohio NO_X SIP Call Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 15, 2010, Ohio EPA submitted to EPA revisions to Ohio OAC 3745–14. EPA is approving these revisions under the Clean Air Act, which allows for Ohio's Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program rules to supersede Ohio's nitrogen oxides (NO_X) State Implementation Plan (SIP) Call Budget Trading Program rules, but leave other requirements of the NO_X SIP Call in place for units not covered by CAIR.

DATES: This rule is effective January 13, 2014, unless EPA receives adverse comments by December 16, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0997, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.