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. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds, Oxides of nitrogen.

Dated: August 5, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

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.*

■ 2. Section 52.2585 is amended by adding paragraph (ee) to read as follows:

§ 52.2585 Control strategy; ozone.

* * * * *

(ee) Approval—On January 16, 2015, the State of Wisconsin submitted a revision to its State Implementation Plan for Kenosha County, Wisconsin. The submittal established new Motor Vehicle Emissions Budgets (MVEB) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) for the year 2015. The MVEBs for Kenosha County nonattainment area are now: 1.994 tons per day of VOC emissions and 4.397 tons per day of NO_X emissions for the year 2015.

[FR Doc. 2016–20002 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0418; FRL–9950–94–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Minor New Source Review—Nonroad Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Virginia state implementation plan (SIP). The revisions amend the definition of ''nonroad engine'' under Virginia's minor New Source Review (NSR) requirements to align with Federal requirements. EPA is approving these revisions to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on October 24, 2016 without further notice, unless EPA receives adverse written comment by September 22, 2016. 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 No. EPA–R03–OAR–2016–0418 at *http://www.regulations.gov,* or via email to *campbell.dave@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 17, 2014, the Virginia Department of Environmental Quality (VADEQ), on behalf of the Commonwealth of Virginia, submitted a formal revision to its SIP. The SIP revision consists of amendments to the definition of ''nonroad engine'' under VADEQ's minor NSR regulations. Virginia has a SIP approved minor NSR program located in the Virginia Administrative Code (VAC) at 9VAC 5–80 which regulates certain modifications and construction of stationary sources within areas covered by its SIP as necessary to assure the national ambient air quality standards (NAAQS) are achieved.

II. Summary of SIP Revision and EPA Analysis

VADEQ's June 17, 2014 SIP submittal includes revisions to the definition of ''nonroad engine'' under the VAC, specifically 9VAC5–80–1110. The definition of ''nonroad engine'' was expanded to include portable and temporary engines. The revision to 9VAC5–80–1110 makes VADEQ's definition more consistent with the Federal definition at 40 CFR 89.2. According to VADEQ, Federal design standards for internal combustion engines and Federal fuel standards for engines are already more restrictive than permit requirements for portable and temporary engines in Virginia's minor NSR program. Virginia's amended definition adopts the Federal definition of ''nonroad engine,'' grouping portable engines and temporary engines together with other non-mobile engines. The revised definition will streamline Virginia's minor NSR program by no longer requiring VADEQ to issue minor NSR permits without meaningful additional emissions control requirements on those engines. Virginia asserted the amended definition does not increase emissions or otherwise affect air quality.

EPA finds these revisions are appropriate and meet the Federal requirements of 40 CFR 51.160 and 51.161, and CAA section 110(a)(2)(C) for a minor NSR program. Additionally, the revision to 9VAC5–80–1110(and in particular the deletions in the revised regulation) are in accordance with

section 110(l) of the CAA because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement.

III. Final Action

EPA is approving VADEQ's June 17, 2014 SIP submittal and incorporating the revised regulation into Virginia's SIP. 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 October 24, 2016 without further notice unless EPA receives adverse comment by September 22, 2016. 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.

IV. 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 NSR 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.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the VADEQ rules regarding definitions and permitting requirements discussed in section II of this preamble. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update of the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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);

[1] 62 FR 27968 (May 22, 1997).

• 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).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 October 24, 2016. 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 action pertaining to Virginia's minor NSR program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 8, 2016.

Shawn M. Garvin,

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 adding an entry for Article 6—Permits for New and Modified Stationary Sources after Article 5 in 9 VAC 5–80 and adding an entry for 5–80–1110 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]
*	*	*	*	*
9 VAC 5, Chapter 80 Permits for Stationary Sources [Part VIII]				
*	*	*	*	*
Article 6—Permits for New and Modified Stationary Sources				
5–80–1110	Definitions	3/27/14	8/23/16, [Insert **Federal Register** Citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2016–19888 Filed 8–22–16; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0523; FRL–9950–84–Region 5]

Air Plan Approval; Indiana; Shipbuilding Antifoulant Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, as a revision to the Indiana State Implementation Plan (SIP), a submittal by the Indiana Department of Environmental Management (IDEM) dated July 17, 2015. The submittal contains a new volatile organic compound (VOC) limit for antifoulant coatings used in shipbuilding and ship repair facilities located in Clark, Floyd, Lake, and Porter counties. The submittal also includes a demonstration that this revision satisfies the anti-backsliding provisions of the Clean Air Act (CAA). The submittal additionally removes obsolete dates and clarifies a citation.

DATES: This direct final rule will be effective October 24, 2016, unless EPA receives adverse comments by September 22, 2016. 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–2015–0523 at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@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 of this SIP revision?
II. What is EPA's analysis of the State's submittal?
III. What action is EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. What is the background of this SIP revision?

On July 17, 2015, IDEM submitted to EPA a request to incorporate into Indiana's SIP a revised version of 326 Indiana Administrative Code (IAC) 8–12–4, ''Volatile organic compound emissions limiting requirements,'' with an effective date of June 21, 2015.

Indiana's rulemaking adds, at 326 IAC 8–12–4(a)(1)(D), a VOC limit of 3.33 lbs VOC per gallon for antifoulant coatings used in shipbuilding and ship repair facilities located in Clark, Floyd, Lake, and Porter counties. In 326 IAC 8–12–3(22)(C), an ''antifoulant specialty coating'' is defined as any coating that is applied to the underwater portion of a vessel to prevent or reduce the attachment of biological organisms and that is registered with the EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act. The same definition is provided in EPA's Control Techniques Guidelines (CTG) for Shipbuilding and Ship Repair Operations (Surface Coating) (61 FR 44050, August 27, 1996). Clark and Floyd counties are part of the Louisville, KY-IN maintenance area for the 1997 ozone National Ambient Air Quality Standard (NAAQS), and Lake and Porter counties are part of the Chicago-Naperville, IL-IN-WI nonattainment area for the 2008 ozone NAAQS and the Chicago-Gary-Lake County, IL-IN maintenance area for the 1997 ozone NAAQS.

Before IDEM added the revised VOC limit of 3.33 lbs VOC per gallon in 326 IAC 8–12–4(a)(1)(D), antifoulant coatings were limited by the specialty coating limit of 2.83 lbs VOC per gallon at 326 IAC 8–12–4(a)(1)(E), which IDEM has moved to 326 IAC 8–12–4(a)(1)(F) in this revision. The revised limit of 3.33 lbs VOC per gallon is consistent with the limit in Table 1–1 of EPA's Alternative Control Techniques (ACT) Document: Surface Coating Operations at Shipbuilding and Ship Repair Facilities (EPA–453/R–94–032, April 1994). In addition, it is consistent with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Shipbuilding and Ship Repair (Surface Coating) at 40 CFR part 63, subpart II. EPA's CTG identifies the limit from the ACT as Reasonably Available Control Technology (RACT), and states that the NESHAP can be used as a model rule for shipbuilding and ship repair facilities.

In Indiana's rulemaking, 326 IAC 8–12–4 is also revised to remove obsolete dates and clarify a reference to EPA's NESHAP for Shipbuilding and Ship Repair (Surface Coating) at 40 CFR 63, subpart II.

This SIP revision relies on offsets generated by the Architectural and Industrial Maintenance (AIM) coatings rule at 326 IAC 8–14 to compensate for the increase in allowable VOC emissions.

II. What is EPA's analysis of the State's submittal?

Revisions to SIP-approved control measures must meet the requirements of, among other statutory provisions, section 110(l) of the CAA in order to be approved by EPA. Section 110(l), known as EPA's anti-backsliding provision, states:

''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.''

In the absence of an attainment demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the CAA under section 110(l), states may substitute equivalent emissions reductions to compensate for any change to a SIP-approved program, as long as actual emissions are not increased. ''Equivalent'' emissions reductions mean reductions which are equal to or greater than those reductions achieved by the control measure approved in the SIP. To show that