PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.405 to read as follows:

§ 334.405 South of entrance to Chesapeake Bay off Camp Pendleton, Virginia; firing range.

(a) *The danger zone.* An area directly from Camp Pendleton extending offshore as denied by lines drawn as follows: Beginning at latitude 36°49′00″ N., longitude 75°58′04″ W.; thence to latitude 36°49′19″ N., longitude 75°57′41″ W.; thence to latitude 36°49′21″ N., longitude 75°57′32″ W.; thence to latitude 36°49′13″ N., longitude 75°56′44″ W.; thence to latitude 36°49′22″ N., longitude 75°55′48″ W.; thence to latitude 36°49′12″ N., longitude 75°55′46″ W.; thence to latitude 36°49′02″ N., longitude 75°55′45″ W.; thence to latitude 36°48′52″ N., longitude 75°55′45″ W.; thence to latitude 36°48′54″ N., longitude 75°56′42″ W.; thence to latitude 36°48′41″ N., longitude 75°57′28″ W.; thence to latitude 36°48′41″ N., longitude 75°57′37″ W.; thence to latitude 36°48′57″ N., longitude 75°58′04″ W. The datum for these coordinates is WGS84.

(b) *The regulations.* (1) Persons and vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purpose of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. No firing will be done during the hours of darkness or low visibility.

(3) Firing on the ranges shall be suspended as long as any persons or vessels are within the danger zone.

(4) Lookout posts shall be manned by the activity or agency operating the firing range State Military Reservation, Camp Pendleton.

(5) There shall be no firing on the range during periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is property displaying navigation lights, or which would preclude a vessel from observing the red range flags or lights.

(c) *Enforcement.* The regulations in this section shall be enforced by the Adjutant General of Virginia, and such agencies as he or she may designate.

Dated: February 17, 2016.

Edward E. Belk, Jr.,

Chief, Operations and Regulatory Division, Directorate of Civil Works.

[FR Doc. 2016–04215 Filed 2–26–16; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0006; FRL–9942–90–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Prevention of Significant Deterioration; Fine Particulate Matter

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) submitted by the Virginia Department of Environmental Quality (VADEQ) on behalf of the Commonwealth on July 22, 2014. VADEQ's submittal revises Virginia's Prevention of Significant Deterioration (PSD) air quality preconstruction permitting program to be consistent with the federal PSD regulations regarding the use of the significant monitoring concentration (SMC) and significant impact levels (SILs) for fine particulate matter ($PM_{2.5}$) emissions. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on April 29, 2016 without further notice, unless EPA receives adverse written comment by March 30, 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–2016–0006 at *http://www.regulations.gov,* or via email to *johansen.amy@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, the 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. The 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: Himanshu Vyas, (215) 814–2112, or by email at *vyas.himanshu@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The CAA at section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the SIP preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: PSD, Nonattainment New Source Review (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—''attainment areas,'' as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source thresholds, and thus do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. The EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR 51.160–51.166.

On October 20, 2010, EPA promulgated revisions to the existing

requirements of the federal PSD permitting program as it pertains to emissions of $PM_{2.5}$.[1] As relevant here for this rulemaking, those revisions included two screening tools which outlined the extent to which certain sources were required as part of a permit application to demonstrate the impact of the proposed project on ambient air quality. A SMC was established to determine whether a PSD permit application may be exempted from the 1-year air monitoring requirement for $PM_{2.5}$ based on the grounds that the increase of the pollutant is de minimis and would have a limited impact on ambient air quality. Additionally, SILs were established, below which a source was presumed to have met its statutory obligation to demonstrate that the proposed project would not cause or contribute to a violation of the NAAQS. In response to a request from EPA and a petition from a third party, the United States Court of Appeals for the District of Columbia Circuit (the Court) subsequently vacated and remanded to the EPA the portions of the 2010 PSD regulations establishing the $PM_{2.5}$ SMC and SILs. *Sierra Club* v. *EPA,* 705 F.3d 458, 463–64 (D.C. Cir. 2013). As a result of this decision, EPA subsequently revised its regulations to amend the SMC for $PM_{2.5}$ and to remove the SILs for $PM_{2.5}$ altogether. *See* 78 FR 73698 (December 9, 2013).[2]

Prior to the Court's decision, on August 25, 2011, VADEQ submitted a formal revision to its SIP to incorporate changes to its $PM_{2.5}$ regulations in accordance with the federal PSD program in effect at that time. In light of the Court's decision, by letter dated February 13, 2013, Virginia officially withdrew from the August 25, 2011 submittal those portions of the Virginia Administrative Code (VAC) which pertained to the $PM_{2.5}$ SILs and SMC. Specifically, Virginia withdrew the $PM_{2.5}$ SIL regulation at paragraph A(2) of 9VAC5–80–1715 and the portion of paragraph E(1) of 9VAC5–80–1695 pertaining to the $PM_{2.5}$ SMC. On February 25, 2014, EPA approved the remaining portions of VADEQ's submittal without addressing the $PM_{2.5}$ SMC and SILs. *See* 79 FR 10377.

[1] *See* ''Prevention of Significant Deterioration (PSD) for Particulate Matter less than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC).'' 75 FR 64864 (October 20, 2010).

[2] Rather than remove the $PM_{2.5}$ SMC in its entirety, EPA revised the value to zero micrograms per cubic meter ($\mu g/m^3$) in order to be clear that there is no air quality impact level below which a permitting authority has the discretion to exempt a source from $PM_{2.5}$ monitoring requirements. *See* 78 FR at 73699.

Virginia subsequently revised the VAC to comport with EPA's December 9, 2013 rulemaking for SILs and SMC and submitted those amended regulations to EPA as a formal SIP revision on July 22, 2014.

II. Summary of SIP Revision

Virginia's July 22, 2014 SIP submittal consists of revisions to Virginia's PSD permitting regulations at 9VAC5–80, sections 1695 and 1715 to reflect federal requirements relating to $PM_{2.5}$ SMC and SILs. Specifically, 9VAC5–80–1695E(1) establishes a SMC of 0 $\mu g/m^3$ of $PM_{2.5}$, and expressly states that no exemption from monitoring is available with regard to $PM_{2.5}$. As previously discussed, VADEQ's $PM_{2.5}$ SILs provision, formerly codified at 9VAC5–80–1715A(2) was never approved by EPA into Virginia's SIP and was subsequently removed by Virginia from the VAC. Therefore, this approval action does not include a substantive revision to 9VAC5–80–1715A. Rather, EPA's action involves approval of Virginia's administrative recodification, necessitated by the Commonwealth's revision of state regulations (*i.e.,* the removal of the SILs from 9VAC5–80–1715). The Virginia regulations, 9VAC5–80, sections 1695 and 1715, are consistent with federal PSD requirements for $PM_{2.5}$ in the CAA and its implementing regulations, including specifically 40 CFR 51.166, and were effective in Virginia on June 4, 2014.

III. Final Action

EPA is approving VADEQ's July 22, 2014 SIP submittal, including revised provisions of the VAC, 9VAC5–80, sections 1695 and 1715, as a revision to the Virginia SIP because the revision meets CAA requirements in the CAA and its implementing regulations. 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 this **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 April 29, 2016 without further notice unless EPA receives adverse comment by March 30, 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 Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.'' Virginia's Immunity law, Va. Code Sec.

10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its 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.

V. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of VADEQ rules regarding $PM_{2.5}$ SILs and SMC discussed in Section III of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or may be viewed at the appropriate EPA office (see the **ADDRESSES** 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 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).

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 April 29, 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 this **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 PSD requirements for $PM_{2.5}$ 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: February 12, 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 revising the entries under Chapter 80 for Sections 5–80–1695 and 5–80–1715 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 8 Permits—Major Stationary Sources and Major Modifications Located in Prevention of Significant Deterioration Areas				
*	*	*	*	*
5–80–1695	Exemptions	6/4/14	2/29/16 [Insert **Federal Register** Citation].	Revised paragraph E(1) to add value for $PM_{2.5}$. Limited approval remains in effect.
*	*	*	*	*
5–80–1715	Source impact analysis	6/4/14	2/29/16 [Insert **Federal Register** Citation].	Revised paragraph A. Limited approval remains in effect.
*	*	*	*	*

* * * * *

[FR Doc. 2016–04245 Filed 2–26–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 600

[CMS–2396–FN]

RIN 0938–ZB21

Basic Health Program; Federal Funding Methodology for Program Years 2017 and 2018

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final methodology.

SUMMARY: This document provides the methodology and data sources necessary to determine Federal payment amounts made in program years 2017 and 2018 to states that elect to establish a Basic Health Program under the Affordable Care Act to offer health benefits coverage to low-income individuals otherwise eligible to purchase coverage through Affordable Insurance Exchanges (hereinafter referred to as the Exchanges).

DATES: These regulations are effective on January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Christopher Truffer, (410) 786–1264; or Stephanie Kaminsky (410) 786–4653.

SUPPLEMENTARY INFORMATION:

Table of Contents

Acronyms

To assist the reader, the following acronyms are used in this document.

ΔAV Change in Actuarial Value
APTC Advance payment of the premium tax credit
ARP Adjusted reference premium
AV Actuarial value
BHP Basic Health Program
CCIIO CMS' Center for Consumer Information and Insurance Oversight
CDC Centers for Disease Control and Prevention
CHIP Children's Health Insurance Program
CPI–U Consumer price index for all urban consumers
CSR Cost-sharing reduction
EHB Essential Health Benefit
FPL Federal poverty line
FRAC Factor for removing administrative costs
IRF Income reconciliation factor
IRS Internal Revenue Service
IUF Induced utilization factor
QHP Qualified health plan
OTA Office of Tax Analysis [of the U.S. Department of Treasury]
PHF Population health factor
PTC Premium tax credit
PTCF Premium tax credit formula
PTF Premium trend factor
RP Reference premium
SBE State Based Exchange