additional days of the due date for initial comments.

VI. Ordering Paragraphs

It is ordered:

1. Docket No. RM2012–4 is established for the purpose of receiving comments in advance of developing regulations regarding new rules of procedure for evaluating requests for advisory opinions under 39 U.S.C. 3661.

2. Interested parties may submit comments no later than 60 days from the date of publication of this notice in the **Federal Register**.

3. Reply comments may be filed no later than 30 days from the due date for initial comments.

4. Pursuant to 39 U.S.C. 505, Patricia Gallagher is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this document in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–9300 Filed 4–17–12; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0169; FRL–9660–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Deferral for CO_2 Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality (VADEQ) on December 14, 2011. This revision proposes to defer until July 21, 2014 the application of the Prevention of Significant Deterioration (PSD) permitting requirements to biogenic carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources in the Commonwealth of Virginia. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before May 18, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0169 by one of the following methods:

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

B. *Email: cox.kathleen@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0169, Ms. Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, 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–2012–0169. 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: Mr. David Talley, (215) 814–2117, or by email at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On December 14, 2011, VADEQ submitted a revision to its State Implementation Plan (SIP) to maintain consistency with Federal greenhouse gas (GHG) permitting requirements under the PSD program.

I. Background

A. The Tailoring Rule

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking, the Tailoring Rule, for the purpose of relieving overwhelming permitting burdens from the regulation of GHG's that would, in the absence of the rule, fall on permitting authorities and sources (75 FR 31514). EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program of the CAA. In particular, EPA established in the Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG-emitters.

For the first step of the Tailoring Rule, which began on January 2, 2011, PSD requirements apply to major stationary source GHG emissions only if the sources are subject to PSD anyway due to their emissions of non-GHG pollutants. Therefore, in the first step, EPA did not require sources or modifications to evaluate whether they are subject to PSD requirements solely on account of their GHG emissions. Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most noticeably the best available control technology (BACT) requirement as defined in CAA section 169(3), apply to projects that increase net GHG emissions by at least 75,000 tons per year (tpy) of CO_2 equivalent (CO_2e), but only if the project also significantly increases emissions of at least one non-GHG pollutant. CO_2e is a metric used to compare the emissions from various greenhouse gases based

upon their global warming potential (GWP). The CO_2e for a gas is determined by multiplying the mass of the gas by the associated GWP. The applicable GWP's and guidance on how to calculate a source's GHG emissions in tpy CO_2e can be found in EPA's ''Inventory of U.S. Greenhouse Gas Emissions and Sinks,'' which is updated annually under existing commitment under the United Nations Framework Convention on Climate Change (UNFCCC).

The second step of the Tailoring Rule, which began on July 1, 2011, phased in additional large sources of GHG emissions. New sources that emit, or have the potential to emit (PTE), at least 100,000 tpy CO_2e are subject to the PSD requirements. In addition, sources that emit or have the PTE at least 100,000 tpy CO_2e and that undertake a modification that increases net GHG emissions by at least 75,000 tpy CO_2e are also be subject to PSD requirements. For both steps, EPA noted that if sources or modifications exceed these CO_2e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers in tpy.

Virginia adopted the regulations at 9VAC5 chapter 85 (9VAC5–85) to incorporate the Tailoring Rule thresholds and submitted them to EPA for approval in to the SIP. The Tailoring Rule and the regulations at 9VAC5–85 address both PSD and Title V requirements. However, only the PSD regulations were submitted to EPA for incorporation into the SIP. On May 13, 2011, EPA took final action to approve that SIP revision (76 FR 27898).

B. EPA's Biomass Deferral Rule

On July 20, 2011, EPA promulgated the final ''Deferral for CO_2 Emissions from Bioenergy and other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs'' (Biomass Deferral). Following is a brief discussion of the deferral. For a full discussion of EPA's rationale for the rule, see the notice of final rulemaking at 76 FR 43490.

The biomass deferral delays until July 21, 2014 the consideration of CO_2 emissions from bioenergy and other biogenic sources (hereinafter referred to as ''biogenic CO_2 emissions'') when determining whether a stationary source meets the PSD and Title V applicability thresholds, including those for the application of BACT.[1] Stationary sources that combust biomass (or otherwise emit biogenic CO_2 emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO_2 emissions resulting from those actions. The deferral applies only to biogenic CO_2 emissions and does not affect non-GHG pollutants or other GHG's (e.g., methane (CH_4) and nitrous oxide (N_2O)) emitted from the combustion of biomass fuel. Also, the deferral only pertains to biogenic CO_2 emissions in the PSD and Title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program. Biogenic CO_2 emissions are defined as emissions of CO_2 from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of ''biogenic CO_2 emissions'' include, but are not limited to:

- CO_2 generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO_2 from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO_2 from fermentation during ethanol production or other industrial fermentation processes;
- CO_2 from combustion of the biological fraction of municipal solid waste or biosolids;
- CO_2 from combustion of the biological fraction of tire-derived fuel; and
- CO_2 derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

EPA recognizes that use of certain types of biomass can be part of the national strategy to reduce dependence on fossil fuels. Efforts are underway at the Federal, state and regional level to foster the expansion of renewable resources and promote bioenergy projects when they are a way to address climate change, increase domestic alternative energy production, enhance forest management and create related employment opportunities. We believe part of fostering this development is to ensure that those feedstocks with negligible net atmospheric impact not be subject to unnecessary regulation. At the same time, it is important that EPA have time to conduct its detailed examination of the science and technical issues related to accounting for biogenic CO_2 emissions and therefore have finalized this deferral. The deferral is intended to be a temporary measure, in effect for no more than three years, to allow the Agency time to complete its work and determine what, if any, treatment of biogenic CO_2 emissions should be in the PSD and Title V programs. The biomass deferral rule is not EPA's final determination on the treatment of biogenic CO_2 emissions in those programs. The Agency plans to complete its science and technical review and any follow-on rulemakings within the three-year deferral period and further believes that three years is ample time to complete these tasks. It is possible that the subsequent rulemaking, depending on the nature of EPA's determinations, would supersede the biomass deferral rulemaking and become effective in fewer than three years. In that event, Virginia may revise its SIP accordingly.

For stationary sources co-firing fossil fuel and biologically-based fuel, and/or combusting mixed fuels (*e.g.,* tire derived fuels, municipal solid waste (MSW)), the biogenic CO_2 emissions from that combustion are included in the biomass deferral. However, the fossil CO_2 emissions are not. Emissions of CO_2 from processing of mineral feedstocks (*e.g.,* calcium carbonate) are also not included in the deferral. Various methods are available to calculate both the biogenic and fossil portions of CO_2 emissions, including those methods contained in the GHG Reporting Program (40 CFR Part 98). Consistent with the other pollutants in PSD and Title V, there are no requirements to use a particular method in determining biogenic and fossil CO_2 emissions.

EPA's final biomass deferral rule is an interim deferral for biogenic CO_2 emissions only and does not relieve sources of the obligation to meet the PSD and Title V permitting requirements for other pollutant emissions that are otherwise applicable to the source during the deferral period or that may be applicable to the source at a future date pending the results of EPA's study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO_2 emissions from a particular source during the three-year effective period and the study and future rulemaking do not provide for a permanent exemption from PSD and Title V permitting requirements for the biogenic CO_2 emissions from a source with particular characteristics, then the deferral would end for that type of source and its biogenic CO_2 emissions would have to be appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes,

[1] As with the Tailoring Rule, the Biomass Deferral addresses both PSD and Title V requirements. However, EPA is only taking action on Virginia's PSD program as part of this action.

consistent with that subsequent rulemaking and the Final Tailoring Rule (*e.g.,* a major source determination for Title V purposes or a major modification determination for PSD purposes). EPA also wishes to clarify that we did not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires.

Section 52.21(w) of 40 CFR requires that any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no longer eligible to exclude its biogenic CO_2 emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its biogenic CO_2 emissions after the deferral expires, the source will need to consider its biogenic CO_2 emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the biomass deferral action and this proposed approval of the deferral into the Virginia SIP, and will be addressed through subsequent rulemaking. The results of EPA's review of the science related to net atmospheric impacts of biogenic CO_2 and the framework to properly account for such emissions in Title V and PSD permitting programs based on the study are prospective and unknown. Thus, we are unable to predict which biogenic CO_2 sources, if any, currently subject to the deferral as incorporated into the Virginia SIP would be subject to any permanent exemptions or which currently deferred sources would be potentially required to account for their emissions in the future rulemaking EPA has committed to undertake for such purposes in three or fewer years. Only in that rulemaking can EPA address the question of extending the deferral or putting in place requirements that would have the equivalent effect on sources covered by the biomass deferral. Once that rulemaking has occurred, Virginia may address related revisions to its SIP.

II. Summary of SIP Revision

Similar to our approach with the Tailoring Rule, EPA incorporated the biomass deferral into the regulations governing state programs and into the Federal PSD program by amending the definition of ''subject to regulation'' under 40 CFR 51.166 and 52.21 respectively. Virginia has adopted this same approach. The proposed SIP revision incorporates the Biomass Deferral into Virginia's PSD program by amending the definition of ''subject to regulation'' under 9VAC5–85–50(C). The language adopted by Virginia mirrors the language in the Federal regulations. EPA last took action on these provisions on May 13, 2011 (76 FR 27898). In addition to the incorporation of the Biomass Deferral, the proposed SIP revision makes a minor, clarifying revision to 9VAC5–85–50(B).

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 (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 § 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.

IV. Proposed Action

EPA's review of this material indicates that it is consistent with Federal regulations. EPA is proposing to approve the Virginia SIP revision incorporating the Biomass Deferral,

which was submitted on December 14, 2011. EPA is soliciting public comments on this proposed approval of Virginia's SIP revision request. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 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 proposed rule relating to GHG permitting under Virginia's PSD program does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: April 5, 2012.

W.C. Early,

Action Regional Administrator, Region III.

[FR Doc. 2012–9339 Filed 4–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0809; FRL–9659–1]

Approval and Promulgation of Implementation Plans; Florida; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part, conditionally approve, and disapprove in part, the State Implementation Plan (SIP) submission, submitted by the State of Florida, through the Florida Department of Environmental Protection (DEP) on December 13, 2007, and supplemented on April 18, 2008, to demonstrate that the State meets the requirements of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. DEP certified that the Florida SIP contains provisions that ensure the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Florida (hereafter referred to as ''infrastructure submission''). EPA is taking four related actions on DEP's infrastructure submission for Florida.

DATES: Written comments must be received on or before May 18, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0809, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2011–0809,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2011–0809. 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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. 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.