reimbursement from a payor (the employer, its agent, or a third party) for expenses the employee pays or incurs; and

(*2*) For purposes of paragraph (f)(2)(iv)(C) of this section, an arrangement under which an independent contractor receives an advance, allowance, or reimbursement from a client or customer for expenses the independent contractor pays or incurs if either—

(*a*) A written agreement between the parties expressly states that the client or customer will reimburse the independent contractor for expenses that are subject to the limitations on deductions in paragraphs (a) through (e) of this section and section 274(n)(1); or

(*b*) A written agreement between the parties expressly identifies the party subject to the limitations.

(E) *Examples.* The following examples illustrate the application of this paragraph (f)(2)(iv).

Example 1. (i) Y, an employee, performs services under an arrangement in which L, an employee leasing company, pays Y a per diem allowance of $10x for each day that Y performs services for L's client, C, while traveling away from home. The per diem allowance is a reimbursement of travel expenses for food and beverages that Y pays in performing services as an employee. L enters into a written agreement with C under which C agrees to reimburse L for any substantiated reimbursements for travel expenses, including meals, that L pays to Y. The agreement does not expressly identify the party that is subject to the deduction limitations. Y performs services for C while traveling away from home for 10 days and provides L with substantiation that satisfies the requirements of section 274(d) of $100x of meal expenses incurred by Y while traveling away from home. L pays Y $100x to reimburse those expenses pursuant to their arrangement. L delivers a copy of Y's substantiation to C. C pays L $300x, which includes $200x compensation for services and $100x as reimbursement of L's payment of Y's travel expenses for meals. Neither L nor C treats the $100x paid to Y as compensation or wages.

(ii) Under paragraph (f)(2)(iv)(D)(*1*) of this section, Y and L have established a reimbursement or other expense allowance arrangement for purposes of paragraph (f)(2)(iv)(B) of this section. Because the reimbursement payment is not treated as compensation and wages paid to Y, under section 274(e)(3)(A) and paragraph (f)(2)(iv)(B)(*1*) of this section, Y is not subject to the section 274 deduction limitations. Instead, under paragraph (f)(2)(iv)(B)(*2*) of this section, L, the payor, is subject to the section 274 deduction limitations unless L can meet the requirements of section 274(e)(3)(B) and paragraph (f)(2)(iv)(C) of this section.

(iii) Because the agreement between L and C expressly states that C will reimburse L for expenses for meals incurred by employees while traveling away from home, under paragraph (f)(2)(iv)(D)(*2*)(*a*) of this section, L and C have established a reimbursement or other expense allowance arrangement for purposes of paragraph (f)(2)(iv)(C) of this section. L accounts to C for C's reimbursement in the manner required by section 274(d) by delivering to C a copy of the substantiation L received from Y. Therefore, under section 274(e)(3)(B) and paragraph (f)(2)(iv)(C)(*2*) of this section, C and not L is subject to the section 274 deduction limitations.

Example 2. (i) The facts are the same as in *Example 1* except that, under the arrangements between Y and L and between L and C, Y provides the substantiation of the expenses directly to C, and C pays the per diem directly to Y.

(ii) Under paragraph (f)(2)(iv)(D)(*1*) of this section, Y and C have established a reimbursement or other expense allowance arrangement for purposes of paragraph (f)(2)(iv)(C) of this section. Because Y substantiates directly to C and the reimbursement payment was not treated as compensation and wages paid to Y, under section 274(e)(3)(A) and paragraph (f)(2)(iv)(C)(*1*) of this section Y is not subject to the section 274 deduction limitations. Under paragraph (f)(2)(iv)(C)(*2*) of this section, C, the payor, is subject to the section 274 deduction limitations.

Example 3. (i) The facts are the same as in *Example 1,* except that the written agreement between L and C expressly provides that the limitations of this section will apply to C.

(ii) Under paragraph (f)(2)(iv)(D)(*2*)(*b*) of this section, L and C have established a reimbursement or other expense allowance arrangement for purposes of paragraph (f)(2)(iv)(C) of this section. Because the agreement provides that the 274 deduction limitations apply to C, under section 274(e)(3)(B) and paragraph (f)(2)(iv)(C) of this section, C and not L is subject to the section 274 deduction limitations.

Example 4. (i) The facts are the same as in *Example 1,* except that the agreement between L and C does not provide that C will reimburse L for travel expenses.

(ii) The arrangement between L and C is not a reimbursement or other expense allowance arrangement within the meaning of section 274(e)(3)(B) and paragraph (f)(2)(iv)(D)(*2*) of this section. Therefore, even though L accounts to C for the expenses, L is subject to the section 274 deduction limitations.

(F) *Effective/applicability date.* This paragraph (f)(2)(iv) applies to expenses paid or incurred in taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 3. Section 1.274–8 is revised to read as follows:

§ 1.274–8 Effective/applicability date.

Except as provided in §§ 1.274–2(a), 1.274–2(e), 1.274–2(f)(2)(iv)(F) and 1.274–5, §§ 1.274–1 through 1.274–7 apply to taxable years ending after December 31, 1962.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–18691 Filed 7–31–12; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0927; FRL–9709–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Prevention of Significant Deterioration and Nonattainment New Source Review; Fine Particulate Matter ($PM_{2.5}$)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Virginia State Implementation Plan (SIP), submitted by the Virginia Department of Environmental Quality (VADEQ) on August 25, 2011. These revisions pertaining to Virginia's Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs incorporate preconstruction permitting regulations for fine particulate matter ($PM_{2.5}$) into the Virginia SIP. A previous PSD program approval of Virginia's Chapter 80, Article 8 regulations was provided to the Commonwealth as a ''limited approval'' for reasons that will not deny this action as being fully approved. In addition, EPA is proposing to approve these revisions and portions of other related submissions for the purpose of determining that Virginia has met its statutory obligations with respect to the infrastructure requirements of the Clean Air Act (CAA) which relate to Virginia's PSD permitting program and are necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS), the 2006 $PM_{2.5}$ NAAQS, and the 2008 lead NAAQS. EPA is proposing to approve these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 31, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0927 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–2011–0927, 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–2011–0927. 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:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On August 25, 2011, VADEQ submitted a formal revision to its State Implementation Plan (SIP) (the August 2011 SIP submission). The SIP revision consists of amendments to major NSR permitting regulations under the Virginia Administrative Code (VAC), specifically Articles 8 and 9 of 9VAC5 Chapter 80. This SIP revision generally pertains to two federal rulemaking actions regarding $PM_{2.5}$. The first is the ''Implementation of the New Source Review (NSR) Program for Particulate Matter less than 2.5 Micrometers ($PM_{2.5}$)'' (NSR $PM_{2.5}$ Rule), which was promulgated on May 16, 2008 (73 FR 28321). The second is the ''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)'' (PSD $PM_{2.5}$ Rule), which was promulgated on October 20, 2010 (75 FR 64864).

Whenever a new or revised NAAQS is promulgated, section 110(a) of the CAA imposes obligations upon states to submit SIP revisions that provide for the implementation, maintenance, and enforcement of the new or revised NAAQS within three years following the promulgation of such NAAQS—the so called infrastructure SIP revisions. Although states typically have met many of the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM standards, states (including all the EPA Region III states) were still required to submit SIP revisions that address section 110(a)(2) for the 1997 and 2006 $PM_{2.5}$ NAAQS. In addition to the August 2011 SIP submission, Virginia has previously submitted SIP revisions addressing requirements set forth in CAA Section 110(a)(2) for the 1997 and 2006 $PM_{2.5}$ NAAQS, as well as the 1997 ozone and 2008 lead NAAQS. Because these SIP submissions addressed Virginia's compliance with CAA section 110(a)(2), these SIP submissions are referred to as infrastructure SIP submissions. These previous submittals, as well as a technical support document (TSD), are included in the docket for today's action. The TSD contains a detailed discussion of these submittals and their relationship to the requirements of CAA section 110(a)(2).

A. Fine Particulate Matter and the NAAQS

On July 18, 1997, EPA revised the NAAQS for particulate matter (PM) to add new standards for fine particles, using $PM_{2.5}$ as the indicator. Previously, EPA used PM_{10} (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for $PM_{2.5}$, setting an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour standard at a level of 65 $\mu g/m^3$ (62 FR 38652). At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5}$, such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary NAAQS for $PM_{2.5}$. In that rulemaking, EPA reduced the 24-hour NAAQS for $PM_{2.5}$ to 35 $\mu g/m^3$ and retained the existing annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$ (71 FR 61236).

B. Implementation of NSR Requirements for $PM_{2.5}$—the NSR $PM_{2.5}$ Rule

On May 16, 2008, EPA finalized a rule (the NSR $PM_{2.5}$ Rule) to implement the 1997 p.m.$_{2.5}$ NAAQS, including changes to the NSR program (73 FR 28321). The 2008 NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. The 2008 NSR $PM_{2.5}$ Rule also established the following NSR requirements to implement the $PM_{2.5}$ NAAQS: (1) Require NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) establish significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and oxides of nitrogen (NO_X); (3) establish $PM_{2.5}$ emission offsets; and (4) require states to account for gases that condense to form particles (condensables) in $PM_{2.5}$ emission limits.

Additionally, the 2008 final rule authorized states to adopt provisions in their nonattainment NSR rules that would allow major stationary sources and major modifications which will be located, or take place in, areas designated nonattainment for $PM_{2.5}$ to offset emissions increases of direct $PM_{2.5}$ emissions or $PM_{2.5}$ precursors with reductions of either direct $PM_{2.5}$ emissions or $PM_{2.5}$ precursors in accordance with offset ratios contained in the approved SIP for the applicable nonattainment area. The inclusion, in whole or in part, of the interpollutant offset provisions for $PM_{2.5}$ is discretionary on the part of the states. In the preamble to the 2008 final rule, EPA included preferred or presumptive offset ratios, applicable to specific $PM_{2.5}$ precursors that states may adopt in conjunction with the new interpollutant offset provisions for $PM_{2.5}$, and for which the state could rely on the EPA's technical work to demonstrate the adequacy of the ratios for use in any $PM_{2.5}$ non attainment area. Alternatively, the preamble indicated that states may adopt their own ratios, subject to the EPA's approval, that would have to be substantiated by modeling or other technical demonstrations of the net air quality benefit for ambient $PM_{2.5}$ concentrations. The preferred ratios were subsequently the subject of a petition for reconsideration, which the Administrator granted. EPA continues to support the basic policy that sources may offset increases in emissions of direct $PM_{2.5}$ or of any $PM_{2.5}$ precursor in a $PM_{2.5}$ nonattainment area with actual emissions reductions in direct $PM_{2.5}$ or $PM_{2.5}$ precursors in accordance with offset ratios as approved in the SIP for the applicable nonattainment area. However, we no longer consider the preferred ratios set forth in the preamble to the 2008 final rule for $PM_{2.5}$ NSR implementation to be presumptively approvable. Instead, any ratio involving $PM_{2.5}$ precursors adopted by the state for use in the interpollutant offset program for $PM_{2.5}$ nonattainment areas must be accompanied by a technical demonstration that shows the net air quality benefits of such ratio for the $PM_{2.5}$ nonattainment area in which it will be applied.

C. PSD $PM_{2.5}$ Rule

On October 20, 2010 (75 FR 64865), EPA promulgated the final ''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)'' (PSD $PM_{2.5}$ Rule). That rulemaking finalized certain program provisions under the regulations to prevent significant deterioration of air quality due to emissions of $PM_{2.5}$ (*i.e.,* under the $PM_{2.5}$ PSD regulations). This final rule supplemented the final implementation rule for $PM_{2.5,}$ known as the Clean Air Fine Particle Implementation Rule (CAFPIR) that we promulgated on April 25, 2007 (72 FR 20586), and the $PM_{2.5}$ NSR Implementation Rule that we promulgated on May 16, 2008 (73 FR28321). Together, these three rules established a regulatory framework for implementation of a $PM_{2.5}$ program in any area. This final rule established increments, SILs, and an SMC for $PM_{2.5}$ to facilitate ambient air quality monitoring and modeling under the PSD regulations for areas designated attainment or unclassifiable for $PM_{2.5}$.

D. Infrastructure Requirements Relating to Virginia's PSD Permit Program

As stated earlier, Virginia's PSD and nonattainment programs are currently operating under a limited SIP approval. However, EPA has previously determined that this limited approval will not impair Virginia's ability to enforce its PSD and nonattainment NSR provisions in a manner consistent with federal requirements (See Section III, below). With the addition of the $PM_{2.5}$ requirements described above, Virginia's nonattainment NSR and PSD programs contain all of the emission limitations and control measures and other program elements required by 40 CFR 51.165 and 40 CFR 51.166 related to the $PM_{2.5}$ NAAQS. Therefore, we are also proposing to approve the August 25, 2011 SIP submittal and the relevant portions of Virginia's infrastructure SIP submittals relating to the PSD permit program under CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for the 1997 $p.m._{2.5,}$ 2006 $p.m._{2.5,}$ and 2008 lead NAAQS. EPA is also proposing to approve the relevant portion of Virginia's infrastructure submittal relating to the PSD permit program pursuant to CAA section 110(a)(2)(D)(i)(II) for the 1997 ozone NAAQS. Additionally, Virginia has met its obligations with respect to the visibility requirements of section 110(a)(2)(D)(i)(II) by virtue of its Regional Haze SIP, which EPA took final action to approve on March 23, 2012 (77 FR 16397). Therefore, EPA is also proposing to approve the portions of Virginia's infrastructure submittals related to the visibility requirements of section 110(a)(2)(D)(i)(II) for the 1997 ozone, 1997 $p.m._{2.5}$, 2006 $p.m._{2.5}$, and 2008 lead NAAQS. As already noted, the TSD for this action contains a detailed discussion of the relevant submissions and EPA's rationale for making this determination.

II. Summary of SIP Revision

The SIP revision submitted by VADEQ consists of amendments to the major NSR permitting regulations of Articles 8 and 9 of 9VAC5 Chapter 80. The revision fulfills the federal program requirements established by the EPA rulemaking actions discussed above. The amendments establish the major source threshold, significant emission rate and offset ratios for $PM_{2.5}$, and establish an allowance for interpollutant trading for offsets and NSR applicability to $PM_{2.5}$ precursor pollutants, pursuant to the May 2008 NSR $PM_{2.5}$ Rule. In addition, the amendments add maximum allowable increases in ambient pollutant concentrations (increments) pursuant to the October 2010 PSD $PM_{2.5}$ Rule. Several minor administrative revisions were made as well.

The amendments submitted by VADEQ for approval into the SIP were adopted by the State Air Pollution Control Board on June 10, 2011, and effective on August 17, 2011. They include revisions to the general definitions under Chapter 10 of 9VAC5 (specifically 9VAC5–10–30), as well as to Articles 8 (PSD) and 9 (nonattainment NSR) under Chapter 80 of 9VAC5. The following regulations under Article 8 are revised: 9VAC5–80–1615 (Definitions), 9VAC5–80–1635 (Ambient Air Increments), and 9VAC5–80–1765 (Sources Affecting Federal Class I Areas—Additional Requirements). Under Article 9, the regulations at 9VAC5–80–2010 (Definitions) and 9VAC5–80–2120 (Offsets) have been amended. Based upon EPA's review of the revisions submitted by Virginia for approval into the SIP, we find these revisions consistent with their federal counterparts.

The revisions submitted by the State of Virginia to address the new PSD requirements for $PM_{2.5}$ pursuant to the EPA's October 20, 2010 final rule include the regulatory text at 40 CFR 51.166(k)(2), concerning the implementation of SILs for $PM_{2.5}$. (See, 9VAC5–80–1715 (Source Impact Analysis)). We stated in the preamble to the 2010 final rule that we do not consider the SILs to be a mandatory SIP element, but regard them as discretionary on the part of permitting authority for use in the PSD permitting process. Nevertheless, the $PM_{2.5}$ SILs are currently the subject of litigation before the U.S. Court of Appeals (DC Circuit). In response to that litigation, the EPA has requested that the Court remand and

vacate the regulatory text in the EPA's PSD regulations at paragraph (k)(2) of section 51.166 so that the EPA can make necessary rulemaking revisions to that text.

In light of EPA's request for remand and vacatur and our acknowledgement of the need to revise the regulatory text presently contained at paragraph (k)(2) of sections 51.166 and 52.21, we do not believe that it is appropriate at this time to approve that portion of the State's SIP revision that contains the affected regulatory text in the State's PSD regulations, specifically new paragraph A.2 of 9VAC5–80–1715. Instead, we are taking no action at this time with regard to that specific provision contained in the SIP revision.

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) generated or developed before the commencement of a voluntary environmental assessment; (2) 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 PSD and nonattainment NSR 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. Proposed Action

Based upon EPA's review of the August 25, 2011 submittal, we find the regulations consistent with their Federal counterparts. Only the increment portion of the October 20, 2010 $p.m._{2.5}$ rule is a required PSD program element. Therefore, EPA is proposing to approve Virginia's SIP revision, with the exception of the portion of the revision which relates to the SILs, upon which we are taking no action. Additionally, in light of this SIP revision, EPA is proposing to approve the portions of Virginia's prior infrastructure submittals related to the PSD program which were not approved as part of our October 11, 2011 action (*See,* 76 FR 62635) as follows: (1) We are proposing to approve the portions of the December 13, 2007 submittal which address the section 110(a)(2)(D)(i)(II) requirements related to Virginia's PSD program for the 1997 ozone NAAQS; (2) We are proposing to approve the portions of the July 10, 2008 and September 2, 2008 submittals which address the requirements of sections 110(a)(2)(C), (D)(i)(II), and (J) which relate to Virginia's PSD program for the 1997 $p.m._{2.5}$ NAAQS; (3) We are proposing to approve the portions of the April 1, 2011 submittal which address the requirements of sections 110(a)(2)(C), (D)(i)(II), and (J) which relate to Virginia's PSD program for the 2006 $p.m._{2.5}$ NAAQS; (4) We are proposing to approve the portions of the March 9, 2012 submittal which address the requirements of sections 110(a)(2)(C), (D)(i)(II), and (J) which relate to Virginia's PSD program for the 2008 lead NAAQS; 5) We are proposing to approve the portions of the November 13, 2007 submittal which address the requirements of sections 110(a)(2)(D)(i) which relate to Virginia's PSD program for the 1997 ozone and 1997 $p.m._{2.5}$ NAAQS; and 6) Because Virginia has met its obligations with respect to the visibility requirements of section 110(a)(2)(D)(i)(II) by virtue of its Regional Haze SIP, which EPA took final action to approve on March 23, 2012 (77 FR 16397), EPA is also proposing to approve the portions of Virginia's previous infrastructure submittals related to the visibility requirements of section 110(a)(2)(D)(i)(II) for the 1997 ozone, 1997 $p.m._{2.5}$, 2006 $p.m._{2.5}$, and 2008 lead NAAQS.

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 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 pertaining to NSR requirements for $PM_{2.5}$ 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 23, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–18800 Filed 7–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0381; FRL–9709–7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Requirements for Prevention of Significant Deterioration and Nonattainment New Source Review; Fine Particulate Matter ($PM_{2.5}$)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware on March 14, 2012. This SIP revision pertaining to Delaware's Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs incorporates preconstruction permitting requirements for fine particulate matter ($PM_{2.5}$) into the Delaware SIP. In addition, EPA is proposing to approve SIP revisions and portions of SIP submissions for the purpose of determining that Delaware has met its statutory obligations with respect to the infrastructure requirements of the Clean Air Act (CAA) which relate to Delaware's PSD permitting program and are necessary to implement, maintain, and enforce the1997 $PM_{2.5}$ and ozone NAAQS, the 2006 $PM_{2.5}$ NAAQS, and the 2008 lead NAAQS. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 31, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0381 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–2012–0381, 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.

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FOR FURTHER INFORMATION CONTACT: Gerallyn Duke, (215) 814–2084, or by email at *duke.gerallyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean