

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2025-0225; FRL-12836-02-R3]

Air Plan Approval; Virginia; Revision to the Regulatory Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision (Revision A23) submitted by the Commonwealth of Virginia. This revision amends the definition of volatile organic compound (VOC) in the Virginia Administrative Code (VAC) to align with the EPA's regulatory definition of VOC. The EPA is approving this revision to update the definition of VOC in the Virginia SIP.

DATES: This final rule is effective on May 26, 2026.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2025-0225. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (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 through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On December 20, 2024, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), submitted a revision to its SIP (Revision A23). Revision A23 updates the definition of VOC in the Virginia SIP (9 VAC 5-10-20 (General Definitions)). Specifically, this amendment adds

trans-1,1,1,4,4,4-hexafluorobut-2-ene (also known as and hereafter referred to as HFO-1336mzz(E); Chemical Abstracts Service [CAS] number: 66711-86-2) as a compound excluded from the regulatory definition of VOC to align with the EPA's February 8, 2023 final rule updating the EPA's regulatory definition of VOC in 40 CFR 51.100(s) (88 FR 8226). The EPA's rulemaking added HFO-1336mzz(E) to the list of compounds excluded from the EPA's regulatory definition of VOC.

I. Background

On September 25, 2025, the EPA published a notice of proposed rulemaking (NPRM) proposing approval of Revision A23 into Virginia's SIP.¹ Revision A23 amends the definition of VOC in the VAC to align with the EPA's regulatory definition of VOC in 40 CFR 51.100(s) by adding HFO-1336mzz(E) to the list of compounds excluded from the regulatory definition of VOC. The Virginia State Air Pollution Control Board adopted the revision on September 13, 2023, the revision was published in the Virginia Register of Regulations on February 26, 2024, and the revision became effective on April 11, 2024. For additional background information on this action, please refer to the NPRM.

II. Summary of SIP Revision and EPA Analysis

In this action, the EPA is approving Virginia's amendment to the definition of VOC in 9 VAC 5-10-20. Revision A23 aligns with the EPA's regulatory changes to the definition of VOC in 40 CFR 51.100(s) and is therefore approvable for the Virginia SIP in accordance with CAA section 110. On February 8, 2023, the EPA made the determination that HFO-1336mzz(E) is of negligible reactivity and therefore has low contributions to tropospheric ozone as well as a low likelihood of risk to public health or the environment.² The addition of HFO-1336mzz(E) to the list of compounds excluded from the regulatory definition of VOC is in accordance with CAA section 110(l).

Other specific requirements of Revision A23 and the rationale for the EPA's proposed action are explained in the NPRM and will not be restated here. A summary of the comments received, as well as the EPA's response, are in section III of this rulemaking.

¹ 90 FR 46121 (September 25, 2025).

² 88 FR 8226 (February 8, 2023).

III. EPA's Response to Comments Received

The EPA's September 25, 2025 NPRM opened a thirty-day comment period, which closed on October 27, 2025.³ The EPA received comments from one commenter. All comments received have been placed in the docket for this action.

A summary of the relevant comments and the EPA's response thereto are listed below.

Comment 1: The commenter accused the EPA of not adhering to the following statutory requirements: the Unfunded Mandates Reform Act (UMRA) and the Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (RFA/SBREFEA).

Response 1: With regard to the UMRA, the EPA complied because this action does not contain any unfunded mandate nor significantly or uniquely affect small governments, as described in UMRA. This rule will not result in expenditures of \$100M+, and therefore the Agency does not need to complete a statement under 2 U.S.C. 1532. The regulatory analysis provisions of the RFA/SBREFEA are only triggered by a threshold determination by the Agency that this rule will have a significant economic impact on a substantial number of small entities. The Agency has certified that this rule will not have a significant economic impact on a substantial number of small entities, therefore section 603 and 604 of the RFA do not apply to this rulemaking. 5 U.S.C. 605(b).

Comment 2: The record lacks a Clean Air Act section 110(l) noninterference analysis tailored to Virginia's ozone areas and PM_{2.5} areas through secondary organic aerosol (SOA) formation.

Response 2: The EPA disagrees with the comment. The EPA's finding of negligible contribution means this action will not interfere with attainment. Additional information supporting the EPA's CAA section 110(l) analysis can be found in the docket for the EPA's February 8, 2023 rulemaking. See docket ID EPA-HQ-OAR-2021-0420.

This action aligns the regulatory definition of VOC in the VAC to the EPA's regulatory definition of VOC in 40 CFR 51.100(s) to exclude HFO-1336mzz(E). On February 8, 2023 the EPA finalized the determination that this compound makes a negligible contribution to tropospheric ozone formation (88 FR 8226). As such, the exclusion of this compound in the VAC is in accordance with CAA section 110(l).

³ 90 FR 46121 (September 25, 2025).

Additionally, as stated in the EPA's 2023 exemption determination, the EPA has recognized that there are existing regulatory or non-regulatory programs that are specifically designed to address PM_{2.5} formation, and the EPA continues to recognize in general that the impacts of VOC exemptions on environmental endpoints other than ozone formation can be adequately addressed by these programs. The VOC exemption policy is intended to facilitate attainment of the ozone NAAQS and VOC exemption decisions will continue to be based primarily on consideration of a compound's contribution to ozone formation. However, if the EPA determines that a particular VOC exemption is likely to result in a significant increase in the use of a compound and that the increased use would pose a significant risk to human health or the environment that would not be addressed adequately by existing programs or policies, then the EPA may exercise its judgment accordingly in deciding whether to grant an exemption.

Comment 3: The commenter asks the EPA to identify the VAC provisions being incorporated by reference, including citation, title, and state effective date, and confirm reasonable availability consistent with 1 CFR 51.5. The commenter asks the EPA to include the following in the docket: the Virginia regulatory text as adopted by the state with effective date(s), a side-by-side comparison against the SIP-approved version to show what is changing, and confirmation of public availability.

Response 3: The EPA acknowledges the requirements addressed by this comment and notes that the required documentation was previously provided in the docket, and the EPA continues to make the materials available online.

In accordance with the requirements of 1 CFR 51.5, all the requested documentation was provided at the time of proposal. See docket ID EPA-R03-OAR-2025-0225. Additionally, the EPA is incorporating by reference the revisions to Virginia Administrative Code 9 VAC 5-10-20 as described in the NPRM and section II of this document. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Final Action

The EPA is approving Revision A23, submitted on December 20, 2024 by VADEQ, as a revision to the Virginia SIP, because the submission meets the requirements of CAA section 110.

Revision A23 adds HFO-1336mzz(E) to the list of compounds excluded from the regulatory definition of VOC in 9 VAC 5-10-20.

V. 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, the EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because the 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, the 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.

VI. Incorporation by Reference

In this rule, 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 the revisions to the definition of VOC in 9 VAC 5-10-20 as discussed in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the 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 the EPA's approval, and will be

incorporated by reference in the next update to the SIP compilation.⁴

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. 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);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - 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 Clean Air Act.
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 2026. 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. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Amy Van Blarcom-Lackey,
Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 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 the entry "Section 5-10-20" after the entry for "Section 5-10-20" (with the state effective day of 5/19/17) to read as follows:

§ 52.2420 Identification of plan.

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(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 10 General Definitions [Part I]				
5-10-20	Terms Defined ..	04/11/24	4/23/2026, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Definition of "volatile organic compound" is revised by adding trans-1,1,1,4,4,4-hexafluorobut-2-ene (also known as HFO-1336mzz(E)) to the list of compounds excluded from the regulatory definition of VOC.

⁴ 62 FR 27968 (May 22, 1997).