



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2025-0225; FRL-12836-01-R3]

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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision (Revision A23) submitted by the Commonwealth of Virginia. This revision pertains to an amendment made to 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:** Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2025-0225 at [www.regulations.gov](http://www.regulations.gov), or via email to [gordon.mike@epa.gov](mailto:gordon.mike@epa.gov). For comments submitted at [Regulations.gov](http://Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://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 [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:** Sarah McCabe, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5786. Ms. McCabe can also be reached via electronic mail at [mccabe.sarah@epa.gov](mailto:mccabe.sarah@epa.gov).

**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 requests to update 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 (88 FR 8226) final rule updating the EPA's regulatory definition of VOC in 40 CFR 51.100(s). The EPA's rulemaking added HFO-1336mzz(E) to the list of compounds excluded from the EPA's regulatory definition of VOC.

## **I. Background**

VOCs are organic compounds of carbon that, in the presence of sunlight, react with sources of oxygen molecules, such as nitrogen oxides (NO<sub>x</sub>) and carbon monoxide (CO), in the atmosphere to produce tropospheric ozone, commonly known as smog. Common sources that may emit VOCs include paints, coatings, housekeeping and maintenance products, and building and furnishing materials. Outdoor emissions of VOCs are regulated by the EPA primarily to prevent the formation of ozone.

VOCs have different levels of volatility, depending on the compound, and react at different rates to produce varying amounts of ozone. VOCs that are non-reactive or of negligible

reactivity to form ozone react slowly and/or form less ozone; therefore, reducing their emissions has limited effects on local or regional ozone pollution. Section 302(s) of the CAA specifies that the EPA has the authority to define the meaning of VOC and what compounds shall be treated as VOCs for regulatory purposes. It is the EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC in order to focus control efforts on compounds that significantly affect ozone concentrations. The regulatory definition of VOC as well as a list of compounds that are designated by the EPA as negligibly reactive can be found at 40 CFR 51.100(s).

Virginia has amended the definition of VOC to match EPA actions multiple times in their SIP. On August 1, 2016, EPA promulgated a final rule revising the regulatory definition of VOC in 40 CFR 51.100(s) to add HFE-347pcf2 to the list of compounds excluded from the regulatory definition of VOC (81 FR 50330). This action was based on the EPA's consideration of the compound's negligible reactivity and low contribution to ozone as well as the low likelihood of risk to human health or the environment. The EPA's rationale for this action is explained in more detail in the final rule for this action. *See* 81 FR 50330 (August 1, 2016). On March 13, 2018, the EPA approved revisions to the Virginia SIP, excluding HFE-347pcf2 from the regulatory definition of VOC and removing recordkeeping and reporting requirements for t-butyl acetate. These revisions matched actions EPA had previously taken. *See* 83 FR 10788.

On November 30, 2016, the Chemours Company submitted a petition to the EPA requesting that *trans*-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz(E)) be exempted from the Federal regulatory definition of VOC. If it can be demonstrated that a particular VOC is "negligibly reactive" that is, if it can be shown that a VOC is not as reactive and therefore does not have a significant effect on ground-level (tropospheric) or upper-level (stratospheric) ozone, then the EPA may remove that compound from the definition of VOC. The petition was based on the argument that HFO-1336mzz(E) has low reactivity and may be used in a variety of applications in foam expansion or blowing agents where it has significant performance and

energy-saving advantages.

After scientific review and public comment, the EPA took final action on February 8, 2023, to respond to the petition by exempting HFO-1336mzz(E) from the Federal regulatory definition of VOC in 40 CFR 51.100(s) (88 FR 8226, February 8, 2023). This action was based on consideration of the compound's low contribution to tropospheric ozone and the low likelihood of risk to human health or the environment, including stratospheric ozone depletion and toxicity. This delisting became effective on April 10, 2023.

## **II. Summary of SIP Revision and EPA Analysis**

On December 20, 2024, VADEQ submitted Revision A23, a SIP revision amending the definition of VOC in 9 VAC 5-10-20 (General Definitions). VADEQ submitted this revision to align with the EPA's current regulatory definition of VOC in 40 CFR 51.100(s) and add 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.

In this action, the EPA is proposing that Virginia's amendment to the definition of VOC in 9 VAC 5-10-20 is in accordance with the EPA's regulatory changes to the definition of VOC in 40 CFR 51.100(s) and are 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 (88 FR 8226). Removing this compound from the definition of VOC in the Virginia SIP will not interfere with attainment of any NAAQS, reasonable further progress, or any other requirement of the CAA, as explained in EPA's rationale in the final rule for that action (88 FR 8226, February 8, 2023). 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).

### **III. Proposed Action**

The EPA is proposing to approve 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. The EPA is soliciting public comments on the issues discussed in this proposed rulemaking. These comments will be considered before taking final action.

### **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, 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.

## **V. Incorporation by Reference**

In this document, the EPA is proposing to include in a final EPA rule regulatory text that

includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the revisions to Virginia Administrative Code 9 VAC 5-10-20 as described in 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).

## **VI. 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 subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review 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 EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rulemaking 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).

#### **List of Subjects in 40 CFR Part 52**

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

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