



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2025-0226; FRL-13007-01-R3]

Air Plan Approval; Virginia; Repeal of Existing Stationary Source Regulations

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 B23) submitted by the Commonwealth of Virginia. The revision seeks to remove two existing stationary sources regulations, emission standards for petroleum refinery operations and emissions standards for large appliance coating application systems, from Virginia's SIP as there are no longer any applicable sources in Virginia. This action is being taken under the Clean Air Act (CAA).

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-2025-0226 at www.regulations.gov, or via email to gordon.mike@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the

person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit 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.

SUPPLEMENTARY INFORMATION: On December 20, 2024, the Virginia Department of Environmental Quality (VADEQ) submitted Revision B23 to its SIP. The revision seeks to repeal Article 11, Emission Standards for Petroleum Refinery Operations (9VAC5-40-1340 through 5-40-1510), and Article 26, Emissions Standards for Large Appliance Coating Application Systems (9VAC5-40-3560 through 5-40-3700) from existing stationary source regulations in the Virginia SIP, as there are no longer any facilities within the state subject to the regulations. Virginia has already repealed the regulations from the Virginia Administrative Code (VAC).

I. Background

The CAA mandates that the EPA set national ambient air quality standards (NAAQS) for criteria pollutants, which are ozone and related photochemical oxidants, carbon monoxide, lead, nitrogen oxides, particulate matter, and sulfur oxides. The CAA also requires the EPA to periodically review the relevant scientific information and the standards and revise them, if appropriate, to ensure that the standards provide the requisite protection for public health and the environment. The CAA requires states to develop a general plan to attain and maintain the standards in all areas of the country and a specific plan to attain the standards for each area designated nonattainment.

In 1972, Virginia promulgated standards on emissions from Existing Stationary Sources (9VAC5-40). The articles pertaining to this rulemaking, Articles 11 and 26, establish regulations

regarding petroleum refineries and large appliance coating application systems, respectively.

Article 11 was promulgated in 1972 to control emissions of criteria pollutants, such as particulate matter, sulfur dioxide, and volatile organic compounds (VOCs) as well as hydrogen sulfide.

Article 26 was also promulgated in 1972 to control emissions of VOCs. The EPA adopted

Article 11 and Article 26 into Virginia's SIP on April 21, 2000 (65 FR 21315).

Virginia state agencies are required to review regulations periodically in order to determine whether they are still needed. A public review of 9VAC5-40, including a review of the VADEQ's Comprehensive Environmental Data System database, demonstrated that there are no longer any facilities within the state subject to Article 11, Emission Standards for Petroleum Refinery Operations, or Article 26, Emissions Standards for Large Appliance Coating Application Systems.

II. Summary of SIP Revision and EPA Analysis

On December 20, 2024, VADEQ submitted a SIP revision (Revision B23) consisting of amendments to Virginia's regulations regarding existing stationary sources (9VAC5-40). The revision proposes to repeal Article 11, Emission Standards for Petroleum Refinery Operations (9VAC5-40-1340 through 5-40-1510), and Article 26, Emissions Standards for Large Appliance Coating Application Systems (9VAC5-40-3560 through 5-40-3700), from the Virginia SIP because there are no remaining petroleum refinery operations or large appliance coating application systems in Virginia. Additionally, any future such facilities constructed in Virginia would be subject to more stringent Federal and State regulations, such as New Source Review, than Articles 11 and 26 in 9VAC5-40.

Section 110(l) of the CAA indicates that the EPA cannot approve a SIP revision if the revision interferes with reasonable further progress (RFP), any NAAQS, or any other CAA requirement. Therefore, the EPA will approve a SIP revision that removes or modifies measures only after the state has demonstrated noninterference with RFP, the NAAQS, or any other CAA requirement. Virginia demonstrated noninterference through a review of 9VAC5-40 and

VADEQ's Comprehensive Environmental Data System database, indicating that there are no longer any facilities subject to the articles proposed for removal. Additionally, the EPA confirmed that there are neither petroleum refineries nor large appliance coating application systems remaining in Virginia through the analysis of the most recently available emissions data¹. CAA section 110(l) also states that a revision to an implementation plan submitted by a state shall be adopted by such state after reasonable notice and public hearing. Revision B23 meets such public notice and public hearing requirements through Virginia's certification of public participation activities and compliance with state administrative procedures document, which can be found in the docket of this rulemaking.

The removal of Articles 11 and 26 in 9VAC5-40 has no expected emissions impact on any pollutant because there are no existing affected facilities in Virginia and the removal of the regulations is not expected to interfere with reasonable further progress, any NAAQS, or any other CAA requirement. Therefore, the removal of Articles 11 and 26 in 9VAC5-40 from the Virginia SIP is in accordance with section 110(l) of the CAA.

The regulations were repealed by Virginia's State Air Pollution Control Board on September 13, 2023. As the regulations have been repealed, they may be removed from Virginia's SIP.

III. Proposed Action

The EPA is proposing to approve Revision B23, 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 B23 repeals Article 11, Emission Standards for Petroleum Refinery Operations (9VAC5-40-1340 through 5-40-1510), and Article 26, Emissions Standards for Large Appliance Coating Application Systems (9VAC5-40-3560 through 5-40-3700) from the Virginia SIP. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

¹ 2020 National Emissions Inventory (NEI).

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 amendments to Virginia Administrative Code 9VAC5-40 Existing Stationary Sources, repealing 9VAC5-40-1340 through 9VAC5-40-1510, and 9VAC5-40-3560 through 9VAC5-40-3700, 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, Reporting and recordkeeping requirements, Particulate matter, Sulfur dioxide, Volatile organic compounds.

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

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