



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2025-0226; FRL-13007-02-R3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision (Revision B23) submitted by the Commonwealth of Virginia. The revision removes 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. The EPA is approving these revisions to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2025-0226. 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 the disclosure of which 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: 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:

I. Background

On November 28, 2025 (90 FR 54607), the EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, the EPA proposed 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. Revision B23 was published in the Virginia Register of Regulations on February 26, 2024, and became effective on April 11, 2024. The formal SIP revision was submitted by Virginia through the Virginia Department of Environmental Quality (VADEQ) on December 20, 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 the repeal of 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. As more fully described in the NPRM and section III in this preamble, the repeal of these articles is in accordance with CAA section 110(l).

The rationale for the EPA's now final action is 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 preamble.

III. EPA's Response to Comments Received

The EPA's November 28, 2025 NPRM (90 FR 54607) opened a comment period which

closed on December 29, 2025. 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 asks the EPA to deny approval of the repeal of Articles 11 and 26 in 9VAC5-40, or at minimum require Virginia to provide a complete technical support package, including transparent assumptions, sensitivity runs, and an enforceability analysis that is specific enough to demonstrate CAA section 110(l) noninterference.

Response 1: The EPA disagrees with the commenter that further analysis of CAA section 110(l) is necessary in this instance. The EPA acknowledges the importance of a CAA section 110(l) noninterference demonstration. As stated in section II of the NPRM, the removal of Articles 11 and 26 in 9VAC5-40 from the Virginia SIP is in accordance with section 110(l) of the CAA. 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 data.¹ Moreover, Virginia's Existing Stationary Source Regulations only apply to stationary sources constructed, modified, or relocated before March 17, 1972, and stationary sources reconstructed before December 10, 1976. As there are no petroleum refinery operations or large appliance coating application systems remaining in Virginia, the repeal of Articles 11 and 26 in 9VAC5-40 will have no impact on RFP, the NAAQS, or any other CAA requirement. Any future facilities would need to assess applicability to Federal and State regulations, such as New Source Review and 9VAC5-50 New and Modified Stationary Sources.

Comment 2: The EPA must evaluate the environmental justice implications of the repeal of Articles 11 and 26 in 9VAC5-40.

¹ 2020 National Emissions Inventory (NEI).

Response 2: This action is consistent with Executive Order 14173 of January 21, 2025 (Ending Illegal Discrimination and Restoring Merit-Based Opportunity) which rescinded Executive Order 12898 on environmental justice, and Executive Order 14148 of January 20, 2025 (Initial Rescissions of Harmful Executive Orders and Actions) which rescinded Executive Order 14096 “Revitalizing Our Nation’s Commitment to Environmental Justice for All”.

IV. Final Action

The EPA is approving 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.

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 document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is removing the incorporation by reference of the 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 discussed in sections II and III 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).

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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. 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, Particulate matter, Sulfur dioxide, 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

§ 52.2420 [Amended]

2. In § 52.2420, the table in paragraph (c) is amended by:

a. Removing the table heading “Article 11 Emission Standards for Petroleum Refinery Operations (Rule 4-11)” and the entries “5-40-1340” through “5-40-1510”; and

b. Removing the table heading “Article 26 Emission Standards for Large Coating Application Systems (Rule 4-26)” and the entries “5-40-3560” through “5-40-3700.”

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