

it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of energy effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A final “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review. Energy Effects under Executive Order 13211.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–147 is added to read as follows:

#### § 165.T09–147 Safety Zone; March of Dimes Paddle Erie, Erie, PA

(a) *Location.* The following area is a temporary safety zone: All navigable waters of Presque Isle Bay bounded by a line connecting the following sets of coordinates: 42°07′56″ N, 080°06′28″ W, then north to 42°09′09″ N, 080°06′37″ W, then southwest to 42°07′27″ N, 080°08′11″ W, then east to the point of origin, in Presque Isle Bay, Erie, PA. [DATUM: NAD 83].

(b) *Effective time and date.* This section is effective from 8 a.m. (local) until 12 p.m. (local) on August 26, 2006.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The “on-scene representative” of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo or his on-scene representative.

Dated: August 8, 2006.

**S.J. Ferguson,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R03–OAR–2006–0153; FRL–8211–1]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised Definition of “Volatile Organic Compound”

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality. This revision amends Virginia regulations by updating the definition of “volatile organic compound”. This action is being taken under the Clean Air Act (CAA or the Act).

**DATES:** *Effective Date:* This final rule is effective on September 18, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2006–0153. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection 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:** Helene Drago, (215) 814–5796, or by e-mail at [drago.helene@epa.gov](mailto:drago.helene@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On April 5, 2006 (71 FR 17050), EPA published a notice of proposed

rulemaking (NPR) for the Commonwealth of Virginia. The revision updated the definition of "volatile organic compound" found in Virginia Regulations. The NPR proposed approval of the updated definition of "volatile organic compound". The formal SIP revision was submitted by the Virginia Department of Environmental Quality on January 12, 2006.

## II. Summary of SIP Revision

On January 12, 2006, the Commonwealth submitted a SIP revision request which amends the definition of "volatile organic compound" found under 9 VAC 5-10-20. The amendment revises the definition of the term "volatile organic compound" to exclude four compounds that have been demonstrated to be less reactive: 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane, 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6-dodecafluoro-2-(trifluoromethyl) hexane, 1,1,1,2,3,3,3-heptafluoropropane, and methyl formate. The definition of VOC has also been revised in order to partially exclude t-butyl acetate. The amendment states that the compound, t-butyl acetate, should be considered to be a VOC for record keeping, emissions reporting, photochemical dispersion modeling and inventory requirements that apply to VOCs and should be uniquely identified in emission reports, but it is not a VOC for purposes of VOC emission standards, emission limitations, or content requirements. This definition update is consistent with Federal regulations.

## 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 (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that 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, 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 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 Clean Air Act, 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 Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

Other specific requirements and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

## IV. Final Action

EPA is approving the revision of the definition of "volatile organic compound" which was submitted on January 12, 2006 as a revision to the Virginia SIP.

## V. Statutory and Executive Order Reviews

### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have

substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does

not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

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 October 17, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 to approve revisions to the Virginia SIP that update the definition of "volatile organic compound" 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 8, 2006.

**Donald S. Welsh,**  
*Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 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 an entry for Chapter 10, Section 5–10–20 after the five existing entries for 5–10–20 to read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES**

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
<b>Chapter 10 General Definitions [Part I]</b>				
*	*	*	*	*
5–10–20 .....	Terms Defined .....	5/04/05	8/18/06 [Insert page number where the document begins].	Revised definition of "volatile organic compound".
*	*	*	*	*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2005–VA–0010; FRL–8211–2]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to Existing Regulation Provisions Concerning Maintenance, Nonattainment, and Prevention of Significant Deterioration Areas**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions consist of amendments to state regulation provisions concerning maintenance, nonattainment, and prevention of significant deterioration (PSD) areas for incorporation into the Virginia SIP. EPA is approving these SIP revisions in accordance with the Clean Air Act (CAA or Act).

**DATES:** *Effective Date:* This final rule is effective on September 18, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–VA–