



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA-HQ-OAR-2012-0393; FRL-9779-4]

RIN 2060-AQ38

Air Quality: Revision to Definition of Volatile Organic Compounds – Exclusion of *trans* 1-chloro-3,3,3-trifluoroprop-1-ene [Solstice™ 1233zd(E)]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revise the definition of volatile organic compounds (VOCs) for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standards for ozone under title I of the Clean Air Act (CAA). This proposed revision would add *trans* 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice™ 1233zd(E)) to the list of compounds excluded from the definition of VOCs on the basis that this compound makes a negligible contribution to tropospheric ozone formation. In the “Rules and Regulations” section of this *Federal Register*, we are making these same amendments as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received on or before **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

Public Hearing: If anyone contacts the EPA requesting to present oral testimony at a public hearing concerning the proposed regulation by **[INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, we will hold a public hearing on **[INSERT DATE 15 DAYS AFTER PUBLICATION IN THE**

FEDERAL REGISTER]. If a public hearing is held, it will be held at 10 a.m. at Building C on the EPA campus in Research Triangle Park, NC, or at an alternate site nearby.

Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-0393, by one of the following methods:

- *www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epamail.epa.gov*, Attention Docket ID No. EPA-HQ-OAR-2012-0393.
- *Fax: 202-566-1541*, Attention Docket ID No. EPA-HQ-OAR-2012-0393.
- *Mail: Docket ID No. EPA-HQ-OAR-2012-0393*, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- *Hand Delivery: EPA Docket Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW, Room: 3334, Mail Code: 6102T, Washington, D.C. 20460*, Attention Docket ID No. EPA-HQ-OAR-2012-0393. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2012-0393. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*, or email. The *www.regulations.gov* website is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses. For additional information about the EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket ID No. EPA-HQ-OAR-2012-0393, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: David Sanders, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539-01, Research Triangle Park, NC 27711; telephone: (919) 541-3356; fax number: 919-541-0824; email address: *sanders.dave@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Why is the EPA using a direct final rule?

This proposed action would revise the EPA's definition of VOCs for purposes of preparing SIPs to attain the NAAQS for ozone under title I of the CAA, by adding *trans* 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice™ 1233zd(E)) to the list of compounds excluded from the definition of VOCs on the basis that this compound makes a negligible contribution to tropospheric ozone formation.¹ We are publishing a direct final rule in the “Rules and Regulations” section of this *Federal Register* because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. The regulatory text for the proposal is identical to that for the direct final rule published in the “Rules and Regulations” section of this *Federal Register*. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this *Federal Register*.

¹ *Trans* 1-chloro-3,3,3-trifluoroprop-1-ene will also be marketed by Honeywell under the trade names Solstice™ N12 Refrigerant, Solstice™ Liquid Blowing Agent, Solstice™ LBA, and Solstice™ Performance Fluid.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule, and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this action will be posted on the EPA's website www.epa.gov/ttn/oarpg/new.html.

C. What should I consider as I prepare my comments for the EPA?

Submitting CBI: Do not submit this information to the EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document

Control Officer (C404-02), U.S. EPA, Research Triangle Park, NC 27711, Attention
Docket ID No. EPA-HQ-OAR-2012-0393.

D. How can I find information about a possible public hearing?

Public Hearing: If anyone contacts the EPA requesting to present oral testimony at a public hearing concerning the proposed regulation by **[INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, we will hold a public hearing on **[INSERT DATE 15 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**. If a public hearing is held, it will be held at 10 a.m. at Building C on the EPA campus in Research Triangle Park, NC, or at an alternate site nearby.

Persons interested in presenting oral testimony must contact Pamela Long, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C504-01, Research Triangle Park, NC 27711; telephone: (919) 541-0641; fax number: 919-541-5509; email address: *long.pam@epa.gov*, no later than **[INSERT DATE 10 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**. Persons interested in attending the public hearing if one is held must also call Ms. Long to verify the time, date and location of the hearing. If no one contacts Ms. Long by **[INSERT DATE 10 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]** with a request to present oral testimony at the hearing, we will cancel the hearing.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). It does not contain any recordkeeping or reporting requirement.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this notice on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.); (2) A governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s proposed rule on small entities, I certify that this action will not have a significant economic impact on a

substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 USC 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This proposed rule would remove Solstice™ 1233zd(E) from the definition of VOCs and thereby relieves users of the compound from requirements to control emissions of the compound. We have therefore concluded that today's proposed rule will relieve regulatory burden for all affected small entities..

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule would remove Solstice™ 1233zd(E) from the definition of VOCs and thereby relieves users of the compound from requirements to control emissions of the compound.

E. Executive Order 13132 - Federalism

This action does not have federalism implications. It will 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. This proposed rule would remove Solstice™ 1233zd(E) from the definition of VOCs and thereby relieves users from requirements to control emissions of the compound. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It would not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. The EPA specifically solicits additional comment on this proposed action from tribal officials

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. This action's health and risk

assessments are contained in the direct final rule publishing in the “Rules and Regulations” section of this *Federal Register* and within the docket for this rulemaking. While this proposed rule is not subject to the Executive Order, the EPA has reason to believe that ozone has a disproportionate effect on active children who play outdoors (62 FR 38856; 38859, July 18, 1997). The EPA has not identified any specific studies on whether or to what extent Solstice™ 1233zd(E) may affect children's health.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, section 12(d), (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, the EPA has not considered the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 4, 2013

Lisa P. Jackson,
Administrator.

[FR Doc. 2013-03063 Filed 02/14/2013 at 8:45 am; Publication Date: 02/15/2013]