



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0323; FRL-9970-17-Region 5]

Air Plan Approval; Illinois; Volatile Organic Compounds

Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state submission as a revision to the Illinois state implementation plan (SIP) for ozone. The revision, submitted on May 30, 2017, incorporates changes to the Illinois Administrative Code (IAC) definition of volatile organic material, otherwise known as volatile organic compound (VOC). The revision removes recordkeeping and reporting requirements related to the use of t-butyl acetate (also known as tertiary butyl acetate) as a VOC, and is in response to an EPA rulemaking that occurred in 2016. Illinois also added information to provide clarity to the list of compounds excluded from the definition of VOC.

DATES: This direct final rule will be effective **[insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[insert date 30 days after date**

of publication in the Federal Register]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2017-0323 at <http://www.regulations.gov> or via email to blakley.pamela@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, 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. 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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3031, hatten.charles@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background for this action?
- II. What did Illinois submit?
- III. What is EPA's analysis of the SIP Revision?
- IV. What action is EPA taking?
- V. Incorporation by Reference.
- VI. Statutory and Executive Order Reviews.

I. What is the background for this action?

The Clean Air Act (CAA) requires the regulation of VOC for various purposes. Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of "VOC," and what compounds shall be treated as VOC for regulatory purposes.

Tropospheric ozone, commonly known as smog, is formed when VOC and nitrogen oxides react in the atmosphere in the presence of sunlight. Because of the harmful effects of ozone, EPA and state governments limit the amount of VOC that can be released into the atmosphere.

EPA uses the reactivity of ethane as the threshold for determining whether a compound makes a negligible contribution to tropospheric ozone formation. Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and, therefore, suitable for exemption by EPA from the regulatory definition of VOC. EPA lists compounds it has determined to be negligibly reactive in its regulations as being excluded from the regulatory definition of VOC in 40 CFR 51.100(s). See 81 FR 9339 (February 25, 2016).

Illinois' SIP includes a definition of VOC at 35 IAC Part 211, Subpart B, Section 7150 (35 IAC 211.7150), which conforms to EPA's regulatory definition of VOC. Subsection (a) of 35 IAC 211.7150 includes a list of compounds excluded from the regulatory definition of VOC, which reflect the compounds EPA has excluded in 40 CFR 51.100(s) on the basis that they make a negligible contribution to tropospheric ozone formation.

II. What did Illinois submit?

On May 30, 2017, Illinois submitted, as a SIP revision, a change to the definition of VOC at 35 IAC 211.7150 in response to an EPA rulemaking in 2016 that updated an existing exemption for the compound tertiary butyl acetate. Illinois also submitted corrections to chemical names and revisions to chemical identifiers included in the list of excluded compounds at 35 IAC 211.7150(a).

The Illinois SIP currently excludes tertiary butyl acetate for purposes of VOC emissions limitations or VOC content requirements. However, the Illinois SIP includes the compound as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC. See 35 IAC 211.7150(e); 69 FR 69298 (November 29, 2004).

In response to an EPA rulemaking in 2016 (discussed further below), Illinois is revising its SIP to remove the recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements related to the use of t-butyl acetate as a VOC by deleting subsection (e) of 35 IAC 211.7150.

Additionally, Illinois amended the list of excluded

compounds by adding the International Union of Pure and Applied Chemistry (IUPAC) names¹ and CAS registry numbers², and presenting common names parenthetically.³ Illinois made these changes to eliminate confusion and make it easier to identify specific excluded compounds in 35 IAC 211.7150(a).

For example, tertiary butyl acetate bears the IUPAC name "1,1-dimethyl ethyl acetic acid ester" and CAS number 540-88-5. EPA lists this compound as "t-butyl acetate" in 40 CFR 51.100(s) (1). Illinois continues to identify the compound as tertiary butyl acetate, and parenthetically added the IUPAC name and CAS number in 35 IAC 211.7150(a).⁴

Finally, Illinois made an administrative change by deleting the words "of this Section" in 35 IAC 211.7150(d), which discusses appropriate testing methods and includes a reference to subsection (b) of 35 IAC 211.7150.

III. What is EPA's analysis of the SIP Revision?

Effective April 25, 2016, EPA amended the regulatory

¹ IUPAC has developed a recognized system of nomenclature for chemical compounds.

² Chemical Abstract Service (CAS) numbers are developed by the American Chemical Society. CAS numbers are in widespread use, and provide clarity because a single CAS number identifies only one chemical isomer.

³ In Table 6 of Attachment 7 to Illinois' submittal, Illinois lists the chemical compounds excluded from the definition of VOC, using the designations by EPA, IUPAC names, CAS numbers, and commonly used alternative names for each.

⁴ EPA continues to include the CAS number to further identify compounds when adopting an exclusion from the definition of VOC. See 81 FR 9339 (February 25, 2016).

definition of VOC to remove applicable recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements for the compound tertiary butyl acetate. (81 FR 9339).

EPA had previously excluded tertiary butyl acetate from the definition of VOC for purposes of VOC emissions limitations and VOC content requirements on the basis that it makes a negligible contribution to tropospheric ozone formation. However, EPA continued to define tertiary butyl acetate as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements that apply to VOC. See 69 FR 69298 (November 29, 2004). Tertiary butyl acetate was the only compound that was excluded from the VOC definition for purposes of emission controls but still considered a VOC for purposes of recordkeeping and reporting requirements.

In 2016, EPA removed the recordkeeping and reporting requirements related to tertiary butyl acetate as a VOC in response to a petition. In removing these requirements, EPA stated that the primary objective of the recordkeeping and reporting requirements for tertiary butyl acetate was to address the cumulative impacts of "negligibly reactive" compounds, and

had suggested that future exempt compounds may also be subject to such requirements. However, these requirements had not been included in any other proposed or final VOC exemptions since the tertiary butyl acetate rule in 2004. EPA found that having high quality data on tertiary butyl acetate emissions alone is unlikely to be very useful in assessing the cumulative impacts of negligibly reactive compounds on ozone formation, and therefore the requirements were not achieving their primary objective to inform more accurate photochemical modeling in support of SIP submissions.

EPA concluded that there was no evidence that tertiary butyl acetate was being used at levels that would cause concern for ozone formation. Additionally, the recordkeeping and reporting requirements, which were unique among all VOC-exempt compounds, were of limited utility because they did not provide sufficient information to judge the cumulative impacts of exempted compounds, and because the data had not been consistently collected and reported by states. As a result, EPA amended 40 CFR 51.100(s)(5) by removing the recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements for tertiary butyl acetate as a VOC. This action did not affect the existing exclusion of tertiary

butyl acetate from the regulatory definition of VOC for purposes of emission limits and control requirements found in 40 CFR 51.100(s) (1). 81 FR 9339 (February 25, 2016).

Illinois' SIP revision is consistent with EPA's action amending the definition of VOC at 40 CFR 51.100(s) (5) to exclude recordkeeping and reporting requirements for tertiary butyl acetate. Additionally, this revision did not affect the existing exclusion of this compound from the regulatory definition of VOC for purposes of emission limits and control requirements in 35 IAC 211.7150(a).

Furthermore, Illinois' addition of IUPAC names and CAS registry numbers to the list of excluded compounds in 35 IAC 211.7150(a) is consistent with the Illinois SIP. Illinois has kept the EPA designated names of the compounds in the list, and added information that may make it easier to identify compounds that are excluded from regulation as VOCs. These changes do not interfere with the Federal listing of excluded compounds, and provide more specific chemical composition, structural, and isomeric identification information.

IV. What action is EPA taking?

EPA is approving revisions to 35 IAC 211.7150 contained in the May 30, 2017, submittal into the Illinois SIP. We are

publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[insert date**

60 days after date of publication in the Federal Register].

V. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.⁵

VI. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and

⁵ 62 FR 27968 (May 22, 1997).

applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted 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 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 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).

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 action 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. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 17, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended 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.*

2. In § 52.720, the table in paragraph (c) is amended under “Part 211: Definitions and General Provisions”, “Subpart B: Definitions” by revising the entry for 211.7150 “Volatile Organic Material (VOM) or Volatile Organic Compound (VOC)” to read as follows:

§ 52.720 Identification of plan.

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(c) * * *

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *				
	Part 211: Definitions and General Provisions,			
* * * * *				
	Subpart B: Definitions			
* * * * *				
211.7150	Volatile Organic Material (VOM) Or Volatile Organic Compound (VOC)	1/23/2017	[insert date of publication in the Federal Register], [insert federal register citation]	
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