



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0429; FRL-9999-08-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Delaware; Amendments to the Regulatory Definition of Volatile Organic Compounds**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Delaware. This revision pertains to amendments made to the definition of volatile organic compounds (VOC) in the Delaware Administrative Code to conform with EPA's regulatory definition of VOC. EPA found that certain compounds have a negligible photochemical reactivity and, therefore, has exempted them from the regulatory definition of VOC in several rulemaking actions. This revision to the Delaware SIP requests the exemption of eight compounds from the regulatory definition of VOC to match the actions EPA has taken. In addition, the revision also requests to remove the recordkeeping, reporting, modeling, and inventory requirements for t-butyl acetate (TBAC). 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-2019-0429 at <https://www.regulations.gov>, or via email to Spielberger.Susan@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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Erin Malone, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2190. Ms. Malone can also be reached via electronic mail at Malone.Erin@epa.gov.

SUPPLEMENTARY INFORMATION: On March 25, 2019, the State of Delaware, through the Department of Natural Resources and Environmental Control (DNREC), formally submitted a revision to its SIP requesting that the definition of VOC in the Delaware SIP be updated to conform with several EPA rulemakings that exempted multiple compounds from the Federal definition of VOC in 40 CFR 51.100(s). The March 25, 2019 SIP revision requested that the

definition of VOC in the Delaware SIP be updated to add the following compounds to the list of compounds excluded from the definition of VOC: trans-1,3,3,3-tetrafluoropropene (HFO-1234ze); HFE-134 (HCF₂OCF₂H); HFE-236cal2 (HCF₂OCF₂OCF₂H); HFE-338pcc13 (HCF₂OCF₂CF₂OCF₂H); H-Galden 1040X or H-Galden ZT 130 or (150 or 180) (HCF₂OCF₂OCF₂CF₂OCF₂H); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; and 2-amino-2-methyl-1-propanol. These compounds were excluded from the Federal regulatory definition of VOC in 40 CFR 51.100(s) by EPA in several rulemakings, which are discussed in more detail later in this notice of proposed rulemaking (NPRM). DNREC's March 25, 2019 SIP revision also requested to delete the recordkeeping, reporting, and modeling requirements for TBAC.

I. Background

VOCs are organic compounds of carbon that, in the presence of sunlight, react with sources of oxygen molecules, such as nitrogen oxides (NO_x) and carbon monoxide (CO), in the atmosphere to produce tropospheric ozone, commonly known as smog. Common sources that may emit VOCs include paints, coatings, housekeeping and maintenance products, and building and furnishing materials. Outdoor emissions of VOCs are regulated by EPA primarily to prevent the formation of ozone.

VOCs have different levels of volatility, depending on the compound, and react at different rates to produce varying amounts of ozone. VOCs that are non-reactive or of negligible reactivity to form ozone react slowly and/or form less ozone; therefore, reducing their emissions has limited effects on local or regional ozone pollution. 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 VOCs for

regulatory purposes.

It is EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC in order to focus control efforts on compounds that significantly affect ozone concentrations. EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity. 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. The policy of excluding negligibly reactive compounds from the regulatory definition of VOC was first laid out in the "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977) and was supplemented subsequently with the "Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans" (70 FR 54046, September 13, 2005). The regulatory definition of VOC as well as a list of compounds that are designated by EPA as negligibly reactive can be found at 40 CFR 51.100(s).

On June 22, 2012 (77 FR 37610), EPA promulgated a final rule revising the regulatory definition of VOC in 40 CFR 51.100(s) to add *trans*-1,3,3,3-tetrafluoropropene (also known as HFO-1234ze) to the list of compounds excluded from EPA's regulatory definition of VOC. HFO-1234ze is used as a refrigerant, an aerosol propellant, and a blowing agent for insulating foam. On February 12, 2013 (78 FR 9823), EPA promulgated a final rule revising the regulatory definition of VOC in 40 CFR 51.100(s) to add HCF₂OCF₂H (also known as HFE-134), HCF₂OCF₂OCF₂H (also known as HFE-236cal2), HCF₂OCF₂CF₂OCF₂H (also known as HFE-338pcc13), and HCF₂OCF₂OCF₂CF₂OCF₂H (also known as H-Galden 1040X or H-Galden ZT 130 (or 150 or 180)), to the list of compounds excluded from EPA's regulatory definition of VOC. These four compounds can be used in some heat transfer applications (as refrigerants) and

as fire suppressants.

On August 28, 2013 (78 FR 53029), October 22, 2013 (78 FR 62451), and March 27, 2014 (79 FR 17037), EPA promulgated final rulemakings revising the regulatory definition of VOC in 40 CFR 51.100(s) to add *trans* 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice™ 1233zd(E)), 2,3,3,3-tetrafluoropropene (also known as HFO-1234yf), and 2-amino-2-methyl-1-propanol (also known as AMP; CAS number 124-68-5), respectively, to the list of compounds excluded from the EPA's regulatory definition of VOC. Solstice™ 1233zd(E) can be used as a solvent in aerosol and non-aerosol applications, as a blowing agent in insulating foams, and as a refrigerant. HFO-1234yf can be used as a refrigerant for refrigeration and air-conditioning. AMP can be used in a variety of applications including in industries involved in the manufacture or use of pigments in water-based coatings, as an additive in metalworking fluids, in food contact paper, as a neutralizer in personal care products, and as an intermediate in chemical synthesis.

These actions were based on EPA's consideration of the compounds' negligible contribution to tropospheric ozone formation as well as the low likelihood of risk to human health or the environment. EPA's rationale for these actions is explained in more detail in the final rules for these actions.

On September 30, 1999, EPA proposed to revise the regulatory definition of VOC in 40 CFR 51.100(s) to exclude TBAC as a VOC 64 FR 52731. In most cases, when a negligibly reactive VOC is exempted from the definition of VOC, emissions of that compound are no longer recorded, collected, or reported to states or the EPA as part of VOC emissions. However, EPA's final rule excluded TBAC from the definition of VOC for purposes of VOC emissions limitations or VOC content requirements but continued to define TBAC as a VOC for purposes

of all recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements that apply to VOCs, 69 FR 69298 (November 29, 2004) (2004 Final Rule).

On February 25, 2016, EPA revised the regulatory definition of VOC under 40 CFR 51.100(s) to remove TBAC's recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements 81 FR 9339 (2016 Final Rule).

II. Summary of SIP Revision and EPA Analysis

In order to conform with EPA's current regulatory definition of VOC in 40 CFR 51.100(s), Delaware amended the definition of VOC in 7 DE Admin. Code 1101 – *Definitions and Administrative Principles*, to add trans-1,3,3,3-tetrafluoropropene (HFO-1234ze); HFE-134 (HCF₂OCF₂H); HFE-236cal2 (HCF₂OCF₂OCF₂H); HFE-338pcc13 (HCF₂OCF₂CF₂OCF₂H); H-Galden 1040X or H-Galden ZT 130 or (150 or 180) (HCF₂OCF₂OCF₂CF₂OCF₂H); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; and 2-amino-2-methyl-1-propanol to the list of compounds excluded from the regulatory definition of VOC. Delaware also amended the definition of VOC in 7 DE Admin. Code 1101 to remove TBAC's recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements. These revisions were adopted by Delaware on October 12, 2016 and were effective November 11, 2016. DNREC formally submitted these amendments to the regulatory definition of VOC as a SIP revision on March 25, 2019. EPA determined DNREC's submission to be administratively and technically complete in the Agency's May 28, 2019 correspondence to DNREC.¹

¹ The Agency's May 28, 2019 completeness letter contained a minor discrepancy when referring to the number of compounds being added to the exemption list in the definition of VOC. The letter erroneously stated that five compounds were being added and then listed the eight compounds that were being added. That statement should have read "DNREC's requested revisions are to add eight additional compounds to the list of exclusions from the VOC definition..."

Delaware's amendments to the definition of VOC in 7 DE Admin. Code are in accordance with EPA's regulatory changes to the definition of VOC in 40 CFR 51.100(s) and are therefore approvable for the Delaware SIP in accordance with CAA Section 110. Additionally, EPA has already made the determination that trans-1,3,3,3-tetrafluoropropene (HFO-1234ze); HFE-134 (HCF₂OCF₂H); HFE-236cal2 (HCF₂OCF₂OCF₂H); HFE-338pcc13 (HCF₂OCF₂CF₂OCF₂H); H-Galden 1040X or H-Galden ZT 130 or (150 or 180) (HCF₂OCF₂OCF₂CF₂OCF₂H); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; and 2-amino-2-methyl-1-propanol are of negligible reactivity and therefore have low contributions to ozone as well as a low likelihood of risk to human health or the environment, and that removing these chemicals from the definition of VOC in the Delaware SIP will not interfere with attainment of any national ambient air quality standard (NAAQS), reasonable further progress, or any other requirement of the CAA.

The 2016 Final Rule stated that the recordkeeping, reporting, modeling, and inventory requirements that remained for TBAC are of limited utility because they do not provide sufficient information to judge the cumulative impacts of exempted compounds and because the data have not been consistently captured and reported. Thus, the addition of these compounds to the list of compounds excluded from the regulatory definition of VOC as well as the removal of the recordkeeping, reporting, modeling, and inventory requirements for TBAC are in accordance with CAA Section 110(l).

III. Proposed Action

EPA's review of the submitted material indicates the revision updated the regulatory definition of VOC in the Delaware SIP to add trans-1,3,3,3-tetrafluoropropene (HFO-1234ze); HFE-134

(HCF₂OCF₂H); HFE-236cal2 (HCF₂OCF₂OCF₂H); HFE-338pcc13 (HCF₂OCF₂CF₂OCF₂H); H-Galden 1040X or H-Galden ZT 130 or (150 or 180) (HCF₂OCF₂OCF₂CF₂OCF₂H); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; and 2-amino-2-methyl-1-propanol to the list of compounds excluded from the regulatory definition of VOC. The revision also updates the regulatory definition of VOC in the Delaware SIP to remove the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for TBAC. EPA is proposing to approve Delaware's SIP revision, which was submitted on March 25, 2019, because the stated revisions to the definition of VOC meet the requirements of CAA section 110. EPA is soliciting public comments on the issues discussed in this rulemaking action. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, 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, EPA is proposing to incorporate by reference the updated definition of VOC in 7 DE Admin. Code 1101 – *Definitions and Administrative Principles*, which adds trans-1,3,3,3-tetrafluoropropene (HFO-1234ze); HFE-134 (HCF₂OCF₂H); HFE-236cal2 (HCF₂OCF₂OCF₂H); HFE-338pcc13 (HCF₂OCF₂CF₂OCF₂H); H-Galden 1040X or H-Galden ZT 130 or (150 or 180) (HCF₂OCF₂OCF₂CF₂OCF₂H); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; and 2-amino-2-methyl-1-propanol to the excluded compounds list and removes the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for TBAC in the regulatory definition of VOC in the Delaware SIP. EPA has made, and will continue to make, these materials generally available through

<https://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).

V. 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 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 proposed 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, this proposed rule, amending the definition of VOC in the Delaware SIP to conform with the regulatory definition of VOC in 40 CFR 51.100(s), does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: August 20, 2019.

Cosmo Servidio,
Regional Administrator,
Region III.

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