



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0429; FRL-10002-99-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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Delaware. The revisions pertain to amendments made to the definition of volatile organic compound (VOC) in the Delaware Administrative Code to conform with EPA's regulatory definition of VOC. EPA found that certain compounds have negligible photochemical reactivity and, therefore, has exempted them from the regulatory definition of VOC in several rulemaking actions. This revision to the Delaware SIP requested the exemption of eight compounds from the regulatory definition of VOC to match the actions EPA has taken. The revision also requested to remove the recordkeeping, reporting, modeling, and inventory requirements for t-butyl acetate (TBAC). EPA is approving these revisions to update the definition of VOC in the Delaware 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: EPA has established a docket for this action under Docket ID Number EPA-

R03-OAR-2019-0429. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., 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 through <https://www.regulations.gov>, or please contact the person identified in the “**For Further Information Contact**” section for additional availability information.

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:

I. Background

On September 3, 2019, EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. 84 FR 45931. In the NPRM, EPA proposed approving Delaware’s amendment of its definition of VOC to include eight additional compounds to the list of exempt compounds and to remove the recordkeeping, reporting, and modeling requirements for TBAC. The formal SIP revision was submitted by Delaware on March 25, 2019.

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 Section 2.0 of 7 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 a 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 the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for TBAC. On March 25, 2019, the State of Delaware, through the Department of Natural Resources and Environmental Control (DNREC), formally submitted these amendments to 7 DE Admin. Code 1101 as a SIP revision.

EPA determined DNREC’s submission to be administratively and technically complete in the Agency’s May 28, 2019 completeness letter to DNREC. The Agency’s completeness letter was inadvertently not added to the docket for this rulemaking action by the time the NPRM went out for publication. The completeness letter can now be found in the docket (Docket ID Number EPA-R03-OAR-2019-0429).

On September 3, 2019, EPA published an NPRM for the State of Delaware’s SIP revision. 84 FR 45931. The rationale for EPA’s proposed action is explained in the NPRM and will not be restated here.¹

EPA received two anonymous comments in response to the NPRM. One comment suggested

¹ In the NPRM, EPA identified that the effective date of Delaware’s amended regulatory changes was November 11, 2016. 84 FR 45931, 45932 (September 3, 2019). However, the actual effective date was December 11, 2016. The change in effective date is due to an error that Delaware corrected in a subsequent notice. See 20 DE Reg. 512 (January 1, 2017) (Errata).

that EPA should not approve Delaware's SIP revision to exclude the identified chemical compounds from the definition for VOC due to concerns regarding harm to the ozone layer and the air quality of ozone at the surface. The second comment was concerned with the cumulative effect of removing the identified chemicals from regulatory control and the effect of their removal on air quality and public health. A copy of the comments can be found in the docket for this rulemaking action.

EPA Response: Both comments appear to be principally concerned with EPA's prior action of approving the exclusion of these chemical compounds from the definition of VOC, thus removing them from regulatory control. However, this current rulemaking addresses Delaware's request to remove the compounds from Delaware's definition of VOC to conform with EPA's regulatory definition. EPA has already reviewed, proposed, and finalized the rulemaking actions that removed the eight compounds from the federal definition of VOC (See 77 FR 37610, June 22, 2012; 78 FR 9823, February 12, 2013; 78 FR 53029, August 28, 2013; 78 FR 62451, October 22, 2013; 79 FR 17037, March 27, 2014). Since EPA is not proposing to change these final federal actions, these comments are not relevant to this rulemaking action involving Delaware's SIP. EPA already found that exempting these pollutants from the regulatory definition of VOC is consistent with the discretion provided to the Administrator in the CAA to define VOC, as explained in the rulemakings cited above. Accordingly, under CAA section 110(k)(3), EPA "shall approve" this SIP revision seeking to incorporate those same exemptions to the Delaware SIP.

III. Final Action

EPA is approving updates to the regulatory definition of VOC in Section 2.0 of 7 DE Admin.

Code 1101, submitted on March 25, 2019 by DNREC, as a revision to the Delaware SIP, as the revision meets the requirements of CAA section 110.

IV. Incorporation by Reference

In this document, 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 revisions to the definition of VOC in Section 2.0 of 7 DE Admin. Code 1101 discussed in Section II of this preamble. 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). Therefore, these materials have been approved by EPA for inclusion in the SIP, 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 in the next update to the SIP compilation.²

V. Statutory and Executive Order Reviews

A. General Requirements

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 action:

² 62 FR 27968 (May 22, 1997).

- 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 rule 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.

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 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).

C. Petitions for Judicial Review

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. This action updating the regulatory definition of VOC in the Delaware SIP 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 27, 2019.

Cosmo Servidio,
Regional Administrator,
Region III.

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.*

Subpart I—Delaware

2. In § 52.420, the table in paragraph (c) is amended under “1101 Definitions and Administrative Principles” by adding a third entry for “Section 2.0”, after the second entry for “Section 2.0” to read as follows:

§ 52.420 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS AND STATUTES IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
1101 Definitions and Administrative Principles				
* * * * *				
Section 2.0	Definitions	12/11/2016	<u>[Insert date of publication in the Federal Register, [Insert Federal Register citation]]</u>	Updated definition of volatile organic compound. Previous approval 5/31/2019.
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[FR Doc. 2019-26687 Filed: 12/11/2019 8:45 am; Publication Date: 12/12/2019]