



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2014-0311; FRL- 9911-90-Region-4]

Approval and Promulgation of Implementation Plans

Alabama: Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Alabama State Implementation Plan (SIP) submitted by the Alabama Department of Environmental Management (ADEM) on September 3, 2013. The revision modifies the definition of “volatile organic compounds” (VOCs). Specifically, the revision adds four hydrofluoropolyethers (HFPEs) compounds, to the list of those excluded from the VOC definition on the basis that these compounds make a negligible contribution to tropospheric ozone formation. ADEM is updating its SIP to be consistent with EPA rule finalized on February 12, 2013, which excludes these compounds from the regulatory VOC definition.

DATES: This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless EPA receives relevant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives such comment, EPA will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2014-0311, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-RDS@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: “EPA-R04-OAR-2014-0311,” Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. “EPA-R04-OAR-2014-0311.” 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 through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an “anonymous access” system, which means

EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail 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, 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 EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, 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 EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your

inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Richard Wong may be reached by phone at (404) 562-8726 or by electronic mail address wong.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Tropospheric ozone, commonly known as smog, occurs when VOCs and nitrogen oxides (NO_x) react in the atmosphere. Because of the harmful health effects of ozone, EPA limits the amount of VOCs and NO_x that can be released into the atmosphere. VOCs are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) that form ozone through atmospheric photochemical reactions. Compounds of carbon (or organic compounds) have different levels of reactivity; they do not react at the same speed, or do not form ozone to the same extent.

It has been EPA's policy that compounds of carbon with negligible reactivity need not be regulated to reduce ozone. *See* 42 FR 35314, July 8, 1977. EPA determines whether a given carbon compound has "negligible" reactivity by comparing the compound's reactivity to the reactivity of ethane. EPA lists these compounds in its regulations at 40 CFR 51.100(s) and excludes them from the definition of VOC. The chemicals on this list are often called

“negligibly reactive.” EPA may periodically revise the list of negligibly reactive compounds to add or delete compounds.

On February 12, 2013, EPA issued a final rule approving the addition of four HFPEs to the list of those compounds excluded from the regulatory definition of VOC. *See* 78 FR 9823. The four HFPEs- HCF2OCF2H (HFE–134), HCF2OCF2OCF2H (HFE–236cal2), HCF2OCF2CF2OCF2H (HFE–338pcc13), and HCF2OCF2OCF2CF2OCF2H (H-Galden 1040X and H-Galden ZT 130 (or 150 or 180)), have been used in some heat transfer applications (as refrigerants) and as fire suppressants. Because HFPEs do not contain chlorine or bromine, these compounds do not contribute to the depletion of the ozone layer and have ozone depletion potential values of zero. ADEM is updating its SIP to be consistent with federal regulations.

II. Analysis of the State’s Submittal

On September 3, 2013, ADEM submitted a SIP revision¹ to EPA for review and approval. The revision modifies the definition of VOCs found at Alabama Administrative Code section 335-3-1-.02(gggg). Specifically, the revision adds four HFPEs compounds- HCF2OCF2H (HFE–134), HCF2OCF2OCF2H (HFE–236cal2), HCF2OCF2CF2OCF2H (HFE–338pcc13), and HCF2OCF2OCF2CF2OCF2H (H-Galden 1040X and H-Galden ZT 130 (or 150 or 180)) to the list of those excluded from the VOC definition on the basis that these compounds make a negligible contribution to tropospheric ozone formation.

¹ Alabama’s September 3, 2013 submission to EPA also included changes to Chapters 335-3-10 New Source Performance Standards and 335-3-11 National Emissions Standards for Hazardous Air Pollutants which are not part of the Alabama federally approved SIP.

This action amends Rule 335-3-1-.02(gggg) to update the definition of VOC to be consistent with EPA regulations. These changes are consistent with the section 110 of the Clean Air Act (CAA or Act).

III. Final Action

Pursuant to section 110 of the CAA, EPA is approving the revision to the Alabama SIP revising the VOC definition. EPA has evaluated Alabama's September 3, 2013, submittal and has determined that it meets the applicable requirements of the CAA and EPA regulations and is consistent with EPA policy. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments.

However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice unless the Agency receives adverse comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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.

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 CAA section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: May 28, 2014.

Heather McTeer Toney.

Regional Administrator,

Region 4.

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 B – Alabama

2. Section 52.50(c) is amended by revising the entry for “Section 335-3-1-.02” to read as follows:

§ 52.50 Identification of plan.

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(c) * * *

EPA Approved Alabama Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 335-3-1 - General Provisions				
* * *	* * *	*	*	*
Section 335-3-1-.02	Definitions	9/24/2013	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
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[FR Doc. 2014-13428 Filed 06/09/2014 at 8:45 am; Publication Date: 06/10/2014]