



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2017-0365; FRL-9965-30-Region 4]

### Air Plan Approval; Kentucky; Revisions to Louisville; Definitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** On August 29, 2012, the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), submitted changes to the Kentucky State Implementation Plan (SIP) on behalf of the Louisville Metro Air Pollution Control District (District). The Environmental Protection Agency (EPA) is taking direct final action to approve a portion of the submission that modifies the District's air quality regulations as incorporated into the SIP. Specifically, the revision pertains to definitional changes, including the modification of the definition of "volatile organic compounds" (VOCs). EPA is taking direct final action to approve this portion of the SIP revision because the Commonwealth has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act). EPA will act on the other portion of KDAQ's August 29, 2012, submittal in a separate action.

**DATES:** This direct final rule is effective [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse comment by [Insert date 30 days after publication in the Federal Register]. If adverse comment is received, EPA will publish a

timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0365 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. 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, 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:** Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In this rulemaking, EPA is proposing to approve a portion of the changes to the Louisville Metro air quality regulations in the Kentucky SIP, submitted by the Commonwealth on August 29, 2012. The submission revises Louisville Metro Regulation 1.02 - *Definitions* and Regulation 2.03 – *Permit Requirements: Non-Title V construction and Operating Permits and Demolition/Renovation Notices and Permit Requirements*. This rulemaking only pertains to Regulation 1.02, which adds, removes, and modifies several definitions and titles in the SIP, including the modification of the definition of VOCs. EPA is not taking action on the proposed changes to Regulation 2.03 at this time.

As it relates to the modification of the definition of VOCs, SIPs contain compounds of carbon that need not be regulated to reduce ozone. *See* 42 FR 35314, July 8, 1977. Tropospheric ozone, commonly known as smog, occurs when VOCs and nitrogen oxides (NO<sub>x</sub>) react in the atmosphere. Because of the harmful health effects of ozone, EPA limits the amount of VOCs and NO<sub>x</sub> 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.

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 November 29, 2004, January 18, 2007, and January 21, 2009, EPA issued final rules revising the definition of VOCs to add new negligibly reactive compounds and make nomenclature clarifications to previously-exempted compounds. The compounds that are being modified in this SIP revision are 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ( $n\text{-C}_3\text{F}_7\text{OCH}_3$ ) (known as HFE-7000), methyl formate ( $\text{HCOOCH}_3$ ), 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ( $\text{C}_4\text{F}_9\text{OCH}_3$ ) (known as HFE-7100), and 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ( $\text{C}_4\text{F}_9\text{OC}_2\text{H}_5$ ) (known as HFE-7200).<sup>1</sup> The Commonwealth's August 29, 2012, SIP revision modifies these compounds by adding the nomenclature clarifications in its SIP-approved definition of VOCs.

The compounds that are being added to the list of negligibly reactive compounds in this SIP revision are methoxy-4-trifluoromethyl-pentane (also known as HFE-7300) or  $\text{C}_2\text{F}_5\text{CF}(\text{OCH}_3)\text{CF}(\text{CF}_3)_2$ ,<sup>2</sup> dimethyl carbonate, and propylene carbonate.<sup>3</sup> HFE-7300 has a variety of potential uses including heat transfer fluids in heat transfer processes and as a substitute for ozone depleting substances and substances with high global warming potential. Because HFEs do not contain chlorine or bromine, these compounds do not contribute to the

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<sup>1</sup> In EPA's November 29, 2004, final rulemaking, the Agency adds 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ( $n\text{-C}_3\text{F}_7\text{OCH}_3$ ) (known as HFE-7000) and methyl formate ( $\text{HCOOCH}_3$ ) to the list of excluded compounds from the definition of VOCs. In the same rulemaking, EPA makes nomenclature clarifications to the previously-exempted compounds 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ( $\text{C}_4\text{F}_9\text{OCH}_3$ ) (known as HFE-7100) and 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ( $\text{C}_4\text{F}_9\text{OC}_2\text{H}_5$ ) (known as HFE-7200). *See* 69 FR 69290. The Commonwealth's SIP currently contains these compounds.

<sup>2</sup> In EPA's January 18, 2007, final rulemaking, the Agency adds methoxy-4-trifluoromethyl-pentane (also known as HFE-7300) or  $\text{C}_2\text{F}_5\text{CF}(\text{OCH}_3)\text{CF}(\text{CF}_3)_2$  to the list of excluded compounds from the definition of VOCs. *See* 72 FR 2193.

<sup>3</sup> In EPA's January 21, 2009, final rulemaking, the Agency adds dimethyl carbonate and propylene carbonate to the list of excluded compounds from the definition of VOCs. *See* 74 FR 3441.

depletion of the ozone layer and have ozone depletion potential values of zero. Dimethyl carbonate may be used as a solvent in paints and coatings. Propylene carbonate has been used in cosmetics as an adhesive component in food packaging and as a solvent for aerial pesticide application. In the past, EPA has considered three different metrics to compare the reactivity of a specific compound to that of ethane: (i) the reaction rate constant with the hydroxyl radical (known as  $k_{OH}$ ), (ii) maximum incremental reactivities (MIR) expressed on a reactivity per gram (mass) basis, and (iii) MIR expressed on a reactivity per mole basis. When compared to ethane, both dimethyl carbonate and propylene carbonate were added to the list of exempt compounds and deemed negligibly reactive since they are equal to or less reactive than ethane on a mass basis. As a result of this determination, the Commonwealth is updating the Louisville Metro portion of its SIP to be consistent with Federal regulations.

## **II. EPA's Analysis of Kentucky's SIP Revision**

The August 29, 2012, SIP submission revises Regulation 1.02 by adding, removing, and modifying definitions and titles within the SIP. Specifically, all instances of "Jefferson County" have been replaced with "Louisville Metro" due to the merger of the City of Louisville and Jefferson County governments. The proposed SIP submission also makes changes to the definition of "Cabinet" to reflect the name change of the Cabinet of the Commonwealth of Kentucky. The remainder of the changes to Regulation 1.02 consist of updates to the definitions to make them consistent with definitions used by EPA, specifically the modifications and additions to exemptions from the definition of VOCs. The changes also include renumbering the entire regulation as a result of the removal of the terms "cancer," "carcinogen," "chronic noncancer effect," "toxic air contaminant," and "toxic air pollutant." The terms "cancer,"

“carcinogen,” “chronic noncancer effect,” “toxic air contaminant,” and “toxic air pollutant” while deleted from Regulation 1.02, have been moved to Regulation 5.00. In this action, EPA is approving the renumbering of this regulation because these terms have been moved.

Modifications are also being made to the term “acute noncancer effect.” EPA is not approving changes to the term “acute noncancer effect” because EPA only approves terms that relate to the attainment and maintenance of the national ambient air quality standards.

EPA believes that these proposed changes to the regulatory portion of the SIP are consistent with section 110 of the CAA and meet the regulatory requirements pertaining to SIPs. Pursuant to CAA section 110(l), the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. With respect to the District’s addition of exemptions from the definition of VOCs, the change is approvable under section 110(l) because it reflects changes to Federal regulations based on findings that the exempted compounds are negligibly reactive. With respect to the District’s renumbering and wording changes, the changes are approvable under section 110(l) because they are ministerial in nature.

### **III. 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 Louisville Metro Regulation 1.02 – *Definitions* (except for the change to the term “acute noncancer effect”), effective June 15, 2011, changes to definitions. 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.<sup>4</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information)

#### **IV. Final Action**

EPA is taking direct final action to approve portions of Kentucky's August 29, 2012 submission submitted by the Commonwealth of Kentucky through KDAQ on behalf of the District. The submission revises Louisville Metro Regulation 1.02 – *Definitions*, except for the changes to the definition "Acute noncancer effect."

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 from the date of publication] without further notice unless the Agency receives adverse comments by [Insert date 30 days from date of publication].

If 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 adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not

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<sup>4</sup> 62 FR 27968 (May 22, 1997).

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 from date of publication] and no further action will be taken on the proposed rule.

## **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 Act and applicable Federal regulations. *See* 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);
- 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 from date of publication of this document 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, Nitrogen dioxide, Sulfur Dioxide, Reporting and recordkeeping requirements.

Dated: July 11, 2017.

V. Anne Heard

Acting 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 S—Kentucky**

2. Section 52.920(c), is amended under Table 2—EPA-Approved Jefferson County Regulations for Kentucky, Reg 1—General Provisions, by revising the entry for “1.02” to read as follows:

**§52.920 Identification of plan.**

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(c) \* \* \*

**Table 2—EPA-Approved Jefferson County Regulations for Kentucky**

<b>Reg</b>	<b>Title/subject</b>	<b>EPA approval date</b>	<b>Federal Register notice</b>	<b>District effective date</b>	<b>Explanation</b>
**	*	*	*	*	*
1.02	Definitions	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication]	6/15/2011	Changes to Definitions with the exception of the term “acute noncancer effect”
**	*	*	*	*	*

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[FR Doc. 2017-15740 Filed: 7/27/2017 8:45 am; Publication Date: 7/28/2017]