



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0557; FRL-9979-92-Region 4]

Air Plan Approval; SC; VOC Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the South Carolina State Implementation Plan (SIP). The revision makes a modification to the definition of “volatile organic compounds” (VOC). EPA is approving the SIP revision submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (DHEC) on September 5, 2017, because the State has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0557. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 through www.regulations.gov or in hard copy at the 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. 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, 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) 562-8726. Mr. Wong can be reached via electronic mail at wong.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 2004 (69 FR 69298), EPA issued a final rule revising the definition of VOC at 40 CFR 51.100(s) by adding tertiary butyl acetate (or t-Butyl acetate or TBAC) to the list of compounds that are considered to be negligibly reactive and excluded from the definition of VOC. Additionally, on February 25, 2016 (81 FR 9339), EPA issued a final rule further revising the definition of VOC at 40 CFR 51.100(s) by removing the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for t-Butyl acetate. EPA removed these requirements in part because there was no evidence that TBAC was being used at levels that cause concern for ozone formation and because the data that had been collected under these requirements had proven to be of limited utility in judging the cumulative

impacts of exempted compounds.¹ See 81 FR 9339, 9341.

On February 15, 2018 (83 FR 6822), EPA published a notice of proposed rulemaking (NPRM) for changes to the South Carolina SIP, submitted by the South Carolina DHEC on September 5, 2017. The submission revises South Carolina Regulation 61-62.1 – *Definitions and General Requirements*, specifically Section I- “Definitions,” by removing the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for t-Butyl acetate. EPA received one adverse comment in the proposed rulemaking. After considering the adverse comment, EPA is now taking final action to approve the South Carolina Regulation 61-62.1, Section I - “Definitions” revision. For more information, see the February 15, 2018, NPRM.

II. Response to Comment

Comment: EPA received one adverse comment to the revision to Regulation 61-62.1, Section I - “Definitions.” The Commenter asserted that air quality policy should be based on no negative impacts on health, and as a result, stated, “This proposed revision would do the opposite because it fails to acknowledge the change in emissions that South Carolina could undertake after tert-butyl acetate (TBAC) is taken off the states list of volatile organic compounds. I reject this revision because EPA's logic for approval is flawed when they say, "...There was no evidence that TBAC was being used at levels that cause concern for ozone formation..."” The Commenter expressed concerns that the use of TBAC could change in South Carolina, and since record keeping and monitoring will no longer be required, this impact will not be assessed.

Because of these concerns, the Commenter recommended that EPA prohibit South Carolina from

¹ In the 2016 EPA rule, EPA also discussed the efforts surrounding any future determinations about the health risks associated with TBAC, including noting that data collected through the recordkeeping and reporting requirements did not appear relevant to any such future determinations and that EPA was assessing the health risks from TBAC through its Integrated Risk Information System. This effort is on-going and more information regarding health risks may be found at EPA’s previous 2016 rulemaking (81 FR 9339, 9341).

adding TBAC to the negligibly reactive list and require South Carolina to continue monitoring TBAC. Finally, the Commenter noted health effects of TBAC.

Response: EPA previously approved South Carolina's revision of its definition of VOC which added t-Butyl acetate to the list of negligibly reactive compounds that are excluded from the State's definition of VOC. 72 FR 30704 (June 4, 2007). That prior rulemaking action is final and is not reopened in the current rulemaking action. Similarly, EPA's prior 2004 (60 FR 69298) final rulemaking that revised the definition of VOC to exclude TBAC as a negligibly reactive compound and EPA's 2016 (81 FR 9339) final rulemaking that removed TBAC recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for TBAC are also not reopened in the current rulemaking action. Rather, in the current action, the State is merely updating the SIP to remove the recordkeeping, emissions reporting, modeling, and inventory requirements for TBAC consistent with EPA's 2016 rulemaking and the federal definitions in 40 CFR 51.100(s).

With regard to health risks, EPA acknowledges the comment regarding the health effects associated with TBAC and is continuing to take steps to assess potential risks associated with this compound. In the 2016 EPA rule, EPA discussed the efforts surrounding any future determinations about the health risks associated with TBAC, including noting that data collected through the recordkeeping and reporting requirements did not appear relevant to any such future determinations and that EPA was assessing the health risks from TBAC through its Integrated Risk Information System. This effort is ongoing, and we refer the Commenter to EPA's previous 2016 rulemaking (81 FR 9339, 9341) for more information regarding health risks.

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 South Carolina Regulation 61-62.1, Section I - “Definitions,” effective August 25, 2017, which revises definitions applicable to the SIP. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 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's 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 in the next update to the SIP compilation.²

IV. Final Action

For the reasons discussed above, EPA is approving the aforementioned change to the South Carolina SIP, submitted on September 5, 2017, because it is consistent with the CAA and federal regulations.

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. 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 final action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” EPA notes this action 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. 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 12, 2018.

Onis “Trey” Glenn, III
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 PP—South Carolina

2. Section 52.2120(c) is amended by revising the entry under Regulation No. 62.1 for “Section I” to read as follows:

§52.2120 Identification of plan.

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(c) * * *

Air Pollution Control Regulations for South Carolina

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Section I	Definitions	8/25/2017	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
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[FR Doc. 2018-13571 Filed: 6/25/2018 8:45 am; Publication Date: 6/26/2018]