



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2020-0095; FRL-10014-96-Region 4]**

**Air Plan Approval; Kentucky: Revisions to Jefferson County VOC Definition**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision to the Jefferson County portion of the Kentucky SIP, submitted by the Commonwealth of Kentucky (Commonwealth), through the Energy and Environment Cabinet (Cabinet) on September 5, 2019. The revision was submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (LMAPCD) and makes changes to the definition of “Volatile Organic Compound” (VOC). EPA is approving the changes amending the definition of VOC because the Commonwealth has demonstrated that the changes are consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule is 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-2020-0095. All documents in the docket are listed on the [www.regulations.gov](http://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 can either be retrieved electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation 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:** Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9088. Ms. Bell can also be reached via electronic mail at [bell.tiereny@epa.gov](mailto:bell.tiereny@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxides (NO<sub>x</sub>) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, EPA and state governments implement rules to limit the amount of certain VOC and NO<sub>x</sub> that can be released into the atmosphere. VOC have different levels of reactivity; they do not react at the same speed or do not form ozone to the same extent. Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of "VOC," and hence, what compounds shall be treated as VOC for regulatory purposes.

EPA determines whether a given carbon compound has “negligible” reactivity by comparing the compound’s reactivity to the reactivity of ethane. It is EPA’s policy that compounds of carbon with negligible reactivity be excluded from the regulatory definition of VOC. *See* 42 FR 35314 (July 8, 1977), 70 FR 54046 (September 13, 2005). 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.

## **II. Analysis of Commonwealth’s Submission**

EPA is approving the Commonwealth’s SIP revision which amends the definition of “Volatile Organic Compound (VOC)” at section 1.84 in LMAPCD Regulation 1.02, *Definitions*.<sup>1</sup> This SIP revision removes an enumerated list of negligibly reactive compounds and incorporates by reference the list of negligibly reactive compounds in the definition of VOC at 40 CFR 51.100(s)(1) as of July 1, 2018, into a new subsection 1.84.1 to ensure that the definition of VOC for the Jefferson County portion of the Commonwealth’s SIP is consistent with the most recent version of the federal definition.<sup>2</sup> As a result of this incorporation by reference, the SIP revision adds exclusions to the definition of VOC that were not previously in the Jefferson County portion of the Commonwealth’s SIP.

This incorporation by reference has the effect of adding the following compounds to the list of negligibly reactive compounds: trans-1,3,3,3-tetrafluoropropene; HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-

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<sup>1</sup> On September 5, 2019, the Commonwealth submitted other SIP revisions which will be addressed in separate actions.

<sup>2</sup> EPA approved revisions to the Jefferson County portion of the Kentucky SIP on July 25, 2019. *See* 84 FR 35828.

chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; 1,1,2,2-Tetrafluoro -1-(2,2,2-trifluoroethoxy) ethane; cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z). These compounds are excluded from the VOC definition on the basis that each of these compounds make a negligible contribution to tropospheric ozone formation. EPA approves the changes to the SIP will not interfere with attainment or maintenance of any national ambient air quality standard, reasonable further progress, or any other applicable requirement of the CAA, consistent with CAA section 110(l), because EPA has found the chemicals listed in 40 CFR 51.100(s)(1) to be negligibly reactive. This SIP revision also adds a new subsection 1.84.2 that includes instructions on how to access copies of the Code of Federal Regulations (CFR).

In a notice of proposed rulemaking (NPRM) published on July 6, 2020 (85 FR 40158), EPA proposed to approve the Commonwealth's September 5, 2019, SIP submission. The July 6, 2020, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the July 6, 2020, NPRM were due on or before August 5, 2020. EPA received two non-adverse comments on July 22, 2020, and August 5, 2020. EPA has determined that these comments were irrelevant to the subject of the July 6, 2020, NPRM. These comments are publicly available at the EPA docket for this action under Docket Identification No. EPA-R04-OAR-2020-0095.

### **III. 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 LMAPCD Regulation 1.02, *Definitions*, version 15, state-effective June 19, 2019, which makes changes to the definition of Volatile Organic Compound by referencing the Federal list of negligibly reactive compounds and including instructions on how to access the CFR. EPA

has made, and will continue to make, these materials generally available through [www.regulations.gov](http://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 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.<sup>3</sup>

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

EPA is approving Kentucky's September 5, 2019, SIP submission, which revises the definition of "Volatile Organic Compound (VOC)" at subsection 1.84.1 in LMAPCD Regulation 1.02, *Definitions*, by adding: trans-1,3,3,3-tetrafluoropropene; HCF<sub>2</sub>OCF<sub>2</sub>H(HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; 1,1,2,2-Tetrafluoro -1-(2,2,2-trifluoroethoxy) ethane; cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z) to the list of organic compounds having negligible photochemical reactivity. EPA is also finalizing the addition of a new subsection 1.84.2 that includes instructions on how to access copies of the CFR.

#### **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

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<sup>3</sup> *See* 62 FR 27968 (May 22, 1997).

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:

- 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).

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 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) of the CAA.

**List of Subjects in 40 CFR Part 52**

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

Dated: September 30, 2020.

Mary Walker,  
Regional Administrator,  
Region 4.

For the reasons stated in the preamble, the 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), Table 2, is amended under “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>
<b>Reg 1 – General Provisions</b>					
**	*	*	*	*	*
1.02	Definitions	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication]	6/19/2019	
**	*	*	*	*	*

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