



## 40 CFR Part 52

[EPA-R03-OAR-2020-0522; FRL-10016-86-Region 3]

### **Approval and Promulgation of Air Quality Implementation Plans; Delaware; Amendments to Control of Volatile Organic Compounds Mobile Equipment Repair And Refinishing Rule Regulation**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). This SIP revision consists of the 2010 amendments to the State of Delaware's Mobile Equipment Repair and Refinishing (MERR) regulations to incorporate the Ozone Transport Commission's (OTC) 2009 Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations regulations (MVMERR) model rule. The MVMERR rule establishes updated volatile organic compounds (VOC) content limits for coating and cleaning solvents used in vehicle refinishing and standards for coating application, work practices, monitoring, and recordkeeping. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2020-0522 at <https://www.regulations.gov>, or via email to [gordon.mike@epa.gov](mailto:gordon.mike@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Mike Gordon, 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) 814-2039. Mr. Gordon can also be reached via electronic mail at [gordon.mike@epa.gov](mailto:gordon.mike@epa.gov).

## **I. Background**

### **A. General**

Ozone is formed in the atmosphere by photochemical reactions between VOCs and nitrogen oxides (NO<sub>x</sub>) in the presence of sunlight. In order to reduce these ozone concentrations, the CAA requires control of VOC and NO<sub>x</sub> emission sources to achieve emission reductions in moderate or more serious ozone nonattainment areas. Section 184(a) of the CAA established a single ozone transport region (OTR), comprising all or part of 12 eastern states, including all of the State of Delaware. Section 176a of the CAA requires that when a transport region is established, the Administrator must also establish a transport commission consisting of certain representatives from each state included within the transport region. See CAA section 176a(b)(1). Following creation of the OTR, an Ozone Transport Commission (OTC) was established in accordance with the requirements of CAA section 176a(b)(1). In December 1999, EPA identified emission reduction shortfalls in several severe 1-hour ozone nonattainment areas,

including those located in the OTR. As a result, the OTC developed model rules for a number of source categories. One of the model rules, the 2002 MERR Model Rule, was developed to reduce VOC emissions from automotive coatings and cleaning solvents associated with non-assembly line refinishing or recoating of motor vehicles, mobile equipment, and their associated parts and components. The OTC 2002 MERR Model Rule applies to a person who applies mobile equipment repair and refinishing or color matched coatings to mobile equipment or mobile equipment components. Delaware's regulations adopting the OTC 2002 MERR model rule were originally approved by EPA into Delaware's SIP on November 22, 2002 (67 FR 70315) as part of a regional effort to attain and maintain the 1-hour ozone NAAQS.

The OTC 2009 MVMERR Model Rule<sup>1</sup> is a revision of the 2002 MERR Model Rule developed by the OTC. The OTC's 2009 MVMERR Model Rule is based upon the California Air Resources Board's (CARB) Suggested Control Measure (SCM) for Automotive Coatings, published October 2005. In order to keep Delaware's regulations up-to-date with the OTC's 2009 MVMERR Model Rule, Delaware revised its regulations, found at 7 DE Admin Code 1124, Control of Volatile Organic Compound Emissions; Section 11.0 Mobile Equipment Repair and Refinishing (Delaware's 2010 amended MERR rule), on September 17, 2010. Delaware then submitted these 2010 amendments to EPA as a SIP revision on May 6, 2020.<sup>2</sup>

## **B. Source Description**

Automobile refinishing includes the application of coatings following the manufacture of original equipment. "Automobile" or "vehicle" in this category refers to passenger cars, trucks, vans, motorcycles, and other mobile equipment capable of being driven on the highway.

Automobile refinishing work typically consists of structural repair, surface preparation, and

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<sup>1</sup> The OTC 2009 MVMERR Model Rule is available online at <https://otcair.org/document.asp?fvview=modelrules> and included in the docket for this rulemaking, available online at <https://www.regulations.gov>, Docket ID: EPA-R03-OAR-2020-0522.

<sup>2</sup> During a recent internal review of the Delaware SIP, DNREC discovered that it had never submitted the 2010 Delaware regulatory changes adopting the 2009 OTC MVMERR Model Rule to EPA as a SIP revision. DNREC therefore submitted this SIP revision in May 2020 so that the EPA-approved SIP would correctly reflect the Delaware regulations.

painting, and includes operations in auto body repair/paint shops, production auto body paint shops, new car dealer repair/paint shops, fleet operator repair/paint shops, and custom-made car fabrication facilities. The steps involved in automobile refinishing include surface preparation, coating applications, and spray equipment. VOC emissions result from the evaporation of solvents during each of these processes and can be controlled through the use of compliant coatings and solvents, the use of application equipment with increased transfer efficiency, and stringent work practice standards.

The main categories of coatings are primers and topcoats. The primer category consists of pretreatment wash primers, primers, primer surfacers, and primer sealer. Topcoats are applied over the primer coats and provide the final color to the refinished area. Primers and coatings can be classified as lacquer, enamel, or urethane coatings. Each coating differs in its chemistry, durability, and VOC content. Some additives and specialty coatings are necessary for unusual performance requirements and are used in relatively small amounts to improve desirable properties. Additives and special coatings include adhesion promoters, uniform refinish blenders, elastomeric materials for flexible plastic parts, gloss flatteners, and anti-glare/safety coatings. For additional information, see EPA's "Alternative Control Techniques (ACT) Document: Automobile Body Refinishing" (EPA-453/R-94-031, April 1994).<sup>3</sup>

## **II. Summary of SIP Revision and EPA Analysis**

On May 6, 2020, DNREC submitted a SIP revision consisting of amendments to its MERR rule to incorporate the OTC 2009 MVMERR Model Rule. If approved into the SIP, Delaware's 2010 amended MERR rule would be federally enforceable. Affected sources within the State of Delaware include: auto body and repair facilities; fleet operator repair and paint facilities; new and used auto dealer repair and paint facilities; after-market auto customizing and detailing facilities; manufacturers, suppliers, and distributors of coatings and cleaning solvents

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<sup>3</sup> EPA's ACT for Automobile Body Refinishing is available online at <https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques> and is included in the docket for this rulemaking, available online at <https://www.regulations.gov>, Docket ID: EPA-R03-OAR-2020-0522.

intended for use and application to motor vehicles, mobile equipment, and associated components; and manufacturers, suppliers, and distributors of application equipment and materials storage such as spray booths, spray guns, and sealed containers for cleaning rags for use within the State of Delaware.

As summarized in Delaware’s transmittal memo for this SIP revision, this SIP revision to Delaware’s existing regulation, 7 DE Admin Code 1124, reduces the VOC contents of currently regulated coatings, regulates additional coating categories, requires the use of coating application equipment that provides for high transfer efficiency, and requires that surface cleaning solvent contain no more than 25 grams of VOC per liter. More specifically, Delaware’s 2010 amended MERR rule establishes revised VOC content limits for automotive coatings and cleaning solvents used in the preparation, application, and drying phases of vehicle refinishing. Delaware’s 2010 amended MERR rule also establishes coating application standards, work practices, operator training standards, and compliance and recordkeeping standards. Table 1 lists the revised VOC limits adopted by the State of Delaware in 2010, and compares them to the standards set in the OTC 2009 MVMERR Model Rule.

**Table 1. Allowable VOC Content in Automotive Coatings for Motor Vehicle and Mobile Equipment Non-Assembly Line Refinishing and Recoating**

Coating Category	VOC Regulatory Limit as Applied*		
	Delaware’s 2010 Amended MERR Rule		2009 OTC MVMERR Model Rule
	(Pounds per gallon)	(Grams per liter)	(Grams per liter)
Adhesion promoter	4.5	540	540
Automotive pretreatment coating	5.5	660	660
Automotive primer	2.1	250	250
Cavity Wax	5.4	650	**
Clear coating	2.1	250	250
Color coating, including metallic/iridescent color coating	3.5	420	420
Deadener	5.4	650	**
Gasket/Gasket material	1.7	200	**
Lubricating wax compound	5.8	700	**
Multicolor coating	5.7	680	680
Sealer	5.4	650	**

Single-stage coating, including single-stage metallic/iridescent coating	2.8	340	340
Temporary protective coating	0.50	60	60
Truck bed liner coating	1.7	200	310
Truck interior	5.4	650	**
Underbody coating	3.6	430	430
All other coating	2.1	250	250

\*VOC regulatory limit as applied means the weight of VOC per volume of coating (prepared to manufacturer's recommended maximum VOC content, minus water and non-VOC solvents).

\*\*2009 OTC MVMERR did not contain a category for this type of automotive coating.

Delaware's 2010 amended MERR rule incorporates without any revisions the VOC limits for all the available coating categories found in the OTC's 2009 MVMERR model rule. In addition, Delaware's 2010 amended MERR rule requires that surface cleaning solvent contain no more than 25 grams of VOC per liter, as required by the 2009 OTC MVMERR Model Rule. All the VOC limits in Delaware's 2010 amended MERR rule are as stringent as the limits in the 2009 OTC MVMERR Model Rule, as shown in Table 1 of this document. Approval of Delaware's 2010 amended MERR rule into the SIP would make these limits, the coating and cleaning solvent VOC content limits, and the use of coating application equipment which provides high transfer efficiency, federally enforceable. The VOC reductions resulting from Delaware's adoption of the 2010 changes to implement the 2009 OTC MVMERR Model Rule have been occurring since the effective date of Delaware's amended regulations, and upon final approval of this SIP revision, will become federally enforceable and will continue to be federally enforceable until such time as Delaware submits, and EPA approves, a SIP revision to revise these limits. Approving Delaware's 2010 amended MERR rule into the SIP strengthens Delaware's SIP, and EPA is therefore proposing to approve it into the Delaware SIP as a SIP strengthening measure.

### **III. Proposed Action**

EPA is proposing to approve Delaware's 2010 amended MERR rule as a SIP revision.

EPA has determined that Delaware's 2010 amended MERR rule is consistent with the

requirements and limits in the 2009 OTC MVMERR Model Rule. Therefore, its approval into the Delaware SIP would result in the VOC reductions in the 2010 amended MERR rule becoming federally enforceable and strengthen the SIP. EPA is soliciting public comments on the issues discussed in this document relevant to Delaware's 2010 amended MERR rule. These comments will be considered before taking final action.

#### **IV. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to 7 DE Admin Code 1124 Control of Volatile Organic Compound Emissions Section 11.0 Mobile Equipment Repair and Refinishing. 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).

#### **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 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 proposed 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 it is not a "significant regulatory action" 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 proposed rulemaking, in which EPA is proposing approval of Delaware's 2010 amended MERR rule to incorporate the 2009 OTC MVMERR Model 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.

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

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

Dated: February 3, 2021

Diana Esher,  
Acting Regional Administrator,  
Region III.

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