



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2015-0384; FRL-9932-22-Region 4]**

Approval and Promulgation of Implementation Plans; Kentucky:

New Sources in or Impacting Nonattainment Areas

**AGENCY:** Environmental Protection Agency

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the Commonwealth of Kentucky's September 23, 2011, State Implementation Plan (SIP) revision, submitted through the Kentucky Division for Air Quality (KY DAQ), which modifies the SIP by making changes to Kentucky regulation, "*Review of new sources in or impacting upon nonattainment areas.*" EPA has preliminarily determined that Kentucky's requested SIP revision meets the applicable provisions of the Clean Air Act (CAA or Act) and EPA regulations regarding Nonattainment New Source Review (NNSR) permitting.

**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-R04-OAR-2015-0384 by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

2. E-mail: [R4-ARMS@epa.gov](mailto:R4-ARMS@epa.gov).
3. Fax: (404) 562-9019.
4. Mail: “EPA-R04-OAR-2015-0384”, 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.
5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, 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. 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-2015-0384. 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](http://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](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://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](http://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](http://www.regulations.gov) index. Although listed in the index, some information may not be 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](http://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:** Zuri Farnvalo of the Air Regulatory Management Section, in the 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. Mr. Farnvalo may be reached by phone at (404) 562-9152 or via electronic mail at [farnvalo.zuri@epa.gov](mailto:farnvalo.zuri@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On September 23, 2011, KY DAQ submitted a SIP revision to EPA for approval that makes several changes to Kentucky's regulations at 401 Kentucky Administrative Regulations (KAR) 51:052, *Review of new sources in or impacting nonattainment areas*. These regulations establish air quality permitting requirements for the construction or modification of major stationary sources located within, or impacting upon, areas designated nonattainment for any primary national ambient air quality standard. To ensure improvement of air quality in those areas, the emissions resulting from construction or modification of a major stationary source must be offset with compensating emission reductions.

Kentucky's requested SIP revision would revise 401 KAR 51:052 by: (1) changing Section 5, paragraph (6)(b) to authorize new or modified sources to offset their emission increases with emission reductions achieved by shutting down an existing unit or curtailing production or operating hours prior to the new source application date (if specified conditions are met), (2) adding new and more comprehensive language to Section 5, paragraph (6)(b) describing how to calculate offsetting emission reductions obtained from a source shutdown or curtailment (3) amending Section 4, paragraph (3)(a) to establish an offset ratio of at least 1:1 for pollutants other than volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>), and (4)

making changes to the introductory paragraph to 401 KAR 51:052 and Section 5, paragraph (3)(e) that update and clarify these provisions.

## **II. Analysis of Kentucky's Submittal**

EPA has reviewed Kentucky's requested changes to 401 KAR 51:052, *Review of new sources in or impacting nonattainment areas*, and preliminarily concluded that these changes are consistent with the applicable CAA provisions and EPA's NNSR permitting regulations at 40 CFR 51.165. Specifically, the changes to Section 5, paragraph (6)(b) of 401 KAR 51:052 authorizing new or modified sources to offset emission increases with emission reductions generated by source shutdowns or curtailments occurring before the filing of a permit application for a new project are consistent with 40 CFR 51.165(a)(3)(ii)(C)(1). Likewise, the new regulatory language in Section 5, paragraph (6)(b) of 401 KAR 51:052 describing how to calculate emission offsets generated from source shutdowns or permanent curtailments also is consistent with 40 CFR 51.165(a)(3)(ii)(C)(1). The change to Section 4, paragraph (3)(a) of 401 KAR 51:052 specifying that increases in emissions shall be offset by reductions in emissions using a ratio of emission decreases to emission increases of at least 1:1 is required by 40 CFR 51.165(a)(9)(i). Finally, the changes to the introductory paragraph to 401 KAR 51:052 and Section 5 paragraph (3)(e) simply update and clarify these provisions and do not affect the consistency of these provisions with federal law. EPA has preliminarily determined that these changes are approvable pursuant to CAA section 110 and EPA's NNSR permitting regulations at 40 CFR 51.165.

## **II. Incorporation by Reference**

In this rule, 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 Kentucky Rule 401 KAR 51:052, *Review of new sources in or impacting nonattainment areas*. EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

### **III. Proposed Action**

EPA is proposing to approve the Commonwealth of Kentucky's September 23, 2011, SIP revision. EPA has preliminarily determined that the changes to Kentucky's Rule 401 KAR 51:052, *Review of new sources in or impacting nonattainment areas*, are approvable because they are consistent with CAA section 110 and EPA's regulations regarding NNSR permitting at 40 CFR 51.165.

### **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. *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 proposed 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)

- 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.

**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 and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 30, 2015.

Heather McTeer Toney  
Regional Administrator,  
Region 4.

**[FR Doc. 2015-19723 Filed: 8/10/2015 08:45 am; Publication Date: 8/11/2015]**