



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0018; FRL-9991-95-Region 4]

Air Plan Approval; Kentucky: Jefferson County Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve two revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), with letters dated August 25, 2017 and March 15, 2018. The SIP revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District) and make amendments to Jefferson County's regulation regarding the prevention of significant deterioration (PSD) permitting program. This action is being taken pursuant to the Clean Air Act (CAA or Act).

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

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R04-OAR-2018-0018. 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: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at febres-martinez.andres@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is taking final action to approve changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through two letters dated August 25, 2017 and March 15, 2018.¹ EPA is finalizing approval of portions of these SIP revisions that make changes to the District's Regulation 2.05 – *Prevention of Significant Deterioration of Air Quality*, which applies to the construction and modification of any major stationary source in areas designated as

¹ EPA notes that the Agency received the SIP revisions on August 29, 2017 and March 23, 2018.

attainment or unclassifiable as required by part C of title I of the CAA. These revisions are intended to make the Jefferson County PSD permitting regulation consistent with the federal requirements, as promulgated by EPA.² The August 25, 2017, SIP revision updates the incorporation by reference (IBR) date found at Regulation 2.05 from July 1, 2010 to July 15, 2016, for the federal PSD permitting regulations at 40 CFR 52.21. Subsequently, the March 15, 2018, SIP revision updates the IBR date at Jefferson County's Regulation 2.05 to July 15, 2017. By updating the IBR date for 40 CFR 52.21, Jefferson County is making the following changes to their PSD regulations: (1) adopting "increments" for the PM_{2.5} National Ambient Air Quality Standard (NAAQS); (2) adopting updated greenhouse gases provisions; (3) incorporating grandfathering provisions for the 2012 primary annual PM_{2.5} NAAQS and the 2015 8-hour ozone NAAQS, as well as adopting the repeal of grandfathering provisions for the previous PM_{2.5} NAAQS; and (4) incorporating a correction to the definition of "regulated NSR pollutant" for PSD.

In a notice of proposed rulemaking (NPRM) published on February 1, 2019, (84 FR 1016), EPA proposed to approve the aforementioned changes to Jefferson County's Regulation 2.05, which addressed the federal PSD permitting requirement through the IBR date for 40 CFR

² EPA's regulations governing the implementation of New Source Review (NSR) permitting programs are contained in 40 CFR 51.160 - 51.166; 52.21, 52.24; and part 51, Appendix S. The CAA NSR program is composed of three separate programs: PSD, nonattainment NSR (NNSR), and Minor NSR. The PSD program is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS) – "attainment areas" – as well as areas where there is insufficient information to determine if the area meets the NAAQS – "unclassifiable areas." The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS – "nonattainment areas." The Minor NSR program addresses construction or modification activities that do not qualify as "major" and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs.

52.21.³ Comments on the NPRM were due on or before March 4, 2019. EPA received no adverse comments on the proposed action, therefore EPA is now taking final action to approve the above-referenced revision.

II. 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 of Jefferson County's Regulation 2.05, *Prevention of Significant Deterioration of Air Quality*, version 13, which is intended to make the Jefferson County PSD permitting regulations consistent with the federal requirements and became state effective January 17, 2018. 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 SIP, 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.⁴

³ EPA has not approved, and is not currently approving into the Jefferson County portion of the Kentucky SIP, the provisions of the Ethanol Rule (May 1, 2007, 72 FR 24060), that seek to exclude facilities that produce ethanol through a natural fermentation process, from the definition of "chemical process plants" in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t). Additionally, EPA notes that the PSD provisions found at 40 CFR 52.21(b)(2)(v) and (b)(3)(iii)(c), regarding the Fugitive Emissions Rule (December 19, 2008; 73 FR 77882), were initially stayed for an 18-month period on March 31, 2010, and subsequently stayed indefinitely by the Fugitive Emissions Interim Rule, on March 30, 2011 (76 FR 17548). These fugitive emissions provisions are automatically stayed in the Jefferson County portion of the Kentucky SIP, under the SIP-approved "automatic rescission clause" at Regulation 2.05, which provides that in the event that EPA or a federal court stays, vacates, or withdraws any section or subsection of 40 CFR 52.21, that section or subsection shall automatically be deemed stayed, vacated or withdrawn.

⁴ See 62 FR 27968 (May 22, 1997).

III. Final Action

EPA is approving changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through two SIP revisions dated August 25, 2017 and March 15, 2018, to update the IBR date for the federal requirements of the PSD program found at 40 CFR 52.21. Through these SIP revisions, the IBR date at Jefferson County's Regulation 2.05 – *Prevention of Significant Deterioration of Air Quality*, is updated to July 15, 2017. EPA is approving these SIP revisions because the Agency has determined that they are consistent with the CAA and would not interfere with attainment or maintenance of any NAAQS, reasonable further progress, or any other applicable requirement.

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. 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 29, 2019.

Mary S. Walker,

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. In § 52.920, table 2 in paragraph (c) is amended under “Reg 2 – Permit Requirements” by revising the entry for “2.05” to read as follows:

§ 52.920 Identification of plan.

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(c) * * *

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TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date	Explanation
**	**	*	*		*
Reg 2—Permit Requirements					
**	**	*	*		*

2.05	Permits	[Insert date of publication in the <u>Federal Register</u>]	[Insert <u>Federal Register</u> citation]	01/17/18	This approval does not include Jefferson County's revisions to incorporate by reference the Ethanol Rule (May 1, 2007), of the Fugitives Emissions Rule (December 19, 2008).
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[FR Doc. 2019-07020 Filed: 4/9/2019 8:45 am; Publication Date: 4/10/2019]