



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2018-0800; FRL-10000-47-Region 4]

### Air Plan Approval; KY; Jefferson County Existing and New VOC Storage Vessels Rule

#### Changes

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of 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), through a letter dated March 15, 2018. The revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District, also referred to herein as Jefferson County) and make minor ministerial amendments to applicability dates and standards for both existing and new storage vessels for volatile organic compounds (VOC). EPA is finalizing approval of the changes because they 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 ID No. EPA-R04-OAR-2018-0800. 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 may not be 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](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:** Evan Adams of 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. The telephone number is (404) 562-9009. Mr. Adams can also be reached via electronic mail at [adams.evan@epa.gov](mailto:adams.evan@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 a letter dated March 15, 2018.<sup>1</sup> Specifically, EPA is finalizing approval of these SIP revisions that make changes to Jefferson County

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<sup>1</sup> EPA notes that the Agency received the SIP revisions on March 23, 2018.

Regulation 6.13, *Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds*, and Regulation 7.12, *Standard of Performance for New Storage Vessels for Volatile Organic Compounds*.<sup>2</sup> The SIP revisions update the current SIP-approved versions of Regulation 6.13 (Version 6) and Regulation 7.12 (Version 6) to Version 7 of each. The changes to Jefferson County Regulations 6.13 and 7.12 are administrative in nature and will better align the two regulations, reconciling their respective applicability based on the date of a facility's construction, modification, or reconstruction.

In a notice of proposed rulemaking (NPRM) published on June 5, 2019 (84 FR 26030), EPA proposed to approve the aforementioned changes to Regulations 6.13 and 7.12 in the Jefferson County portion of the Kentucky SIP, which address the control of emissions from existing and new VOC storage vessels, respectively. The NPRM provides additional details regarding EPA's action. Comments on the NPRM were due on or before July 5, 2019.

## **II. Response to Comments**

EPA received two comments from one commenter on its June 5, 2019, NPRM. These comments are provided in the docket for this final action. EPA has summarized and responded to the comments below.

**Comment 1:** The commenter notes the change of applicability dates in Regulation 6.13 and states that the Jefferson County regulations are based on Federal New Source Performance Standards (NSPS), Subpart K. "However, Subpart K only applies to vessels constructed,

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<sup>2</sup> EPA also notes that the Agency received several other revisions to the Jefferson County portion of the Kentucky SIP submitted with the same March 15, 2018, cover letter. EPA will be considering action on the remaining revisions in separate actions.

reconstructed, or modified after June 11, 1973 and prior to May 19, 1978,” states the commenter. The commenter also states that “Jefferson County’s regulations seem to require more stringent standards” and suggests that EPA “confirm through formal notification from Kentucky and Jefferson County that they are allowed to impose more stringent standards than those by the federal government.”

**Response 1:** The change of applicability dates in Version 7 of Regulation 6.13 was made to eliminate an overlap that existed with respect to the applicability dates of Regulations 6.13 and 7.12. Under the previous versions of Regulations 6.13 and 7.12, facilities constructed, reconstructed, or modified after April 19, 1972, and before September 1, 1976, were subject to both Regulation 6.13 and 7.12. This redundancy prompted the District to change the date for Regulation 6.13 so that Regulation 6.13 applies to VOC storage vessels that commenced construction, modification, or reconstruction on or before April 19, 1972.

Regulations 6.13 and 7.12 are similar to the Federal NSPS, subpart K. However, by virtue of the VOC-storage-vessel capacity and the dates identified in Section 1, *Applicability*, of Regulations 6.13 and 7.12, both Regulations cover a wider range of facilities than does subpart K. The commenter seems to suggest that the larger applicability scope of the Jefferson County regulations as compared to that of subpart K makes the Jefferson County regulations more stringent than federal requirements. Regardless of whether or not that is true, state and local agencies are allowed under federal law to adopt regulations that are more stringent than those required by the CAA, and EPA is required by the Act to approve such SIP revisions if they meet the applicable requirements of the Act, as these revisions do. *See Union Elec. Co. v. EPA*, 427 U.S. 246, 262-65 (1976); 42 U.S.C. 7410(k)(3).

Likewise, with respect to state and local law, Kentucky law includes a stringency restriction with respect to regulations adopted by the Cabinet,<sup>3</sup> but the regulations of the District are not subject to such a limitation. Indeed, Kentucky law authorizes the District, through its Air Pollution Control Board, to adopt and enforce all orders, rules, and regulations necessary or proper to accomplish the purposes of Kentucky Revised Statutes Chapter 77. *See* Ky. Rev. Stat. § 77.180. Kentucky law also provides that an air pollution control district like the District is not prohibited from adopting regulations stricter than the state statutory or regulatory provisions that would otherwise apply to sources of air pollution within a district. *See id.* at § 77.170.

**Comment 2:** The commenter states, “Regulation 6.13 and 7.12 require sources to remain in compliance with this regulation for the rest of time unless the source changes its process to one not covered by this regulation.” The commenter believes this is “an attempt at codifying the ‘once in, always in’ policy,” which EPA recently rescinded. The commenter states, “EPA should not allow the county or state to include this requirement into its SIP as EPA itself has stated it is illegal under the MACT standards so therefore it must be illegal under SIP rules.”

**Response 2:** The “once in always in” policy addressed the classification of major sources of hazardous air pollutants (HAPs) under section 112 of the CAA. EPA issued a new memorandum on January 25, 2018, which withdrew and replaced the “once in, always in” policy with guidance that sources of hazardous air pollutants previously classified as “major sources” may be reclassified as “area” sources when the facility limits its potential to emit HAP below

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<sup>3</sup> Kentucky law provides that the Cabinet “shall have the authority, power, and duty to . . . [p]reserve existing clean air resources while ensuring economic growth by issuing regulations, which shall be no more stringent than federal requirements . . . .” Ky. Rev. Stat. § 224.10-100(26).

major source thresholds.<sup>4</sup> EPA subsequently proposed to codify that guidance. *See* 84 FR 36304 (July 26, 2019). Here, the regulations that are being incorporated into the Kentucky SIP are local VOC (i.e., precursor of ozone, a criteria pollutant) regulations being approved by EPA pursuant to CAA section 110, and thus are not subject to the “once in, always in” policy or its more recent replacement, which apply to sources of HAPs regulated pursuant to CAA section 112.

### **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 of Jefferson County Regulation 6.13, *Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds*, Version 7, and Regulation 7.12, *Standard of Performance for New Storage Vessels for Volatile Organic Compounds*, Version 7, both state effective January 17, 2018. These revisions are administrative in nature and will better align the two regulations, reconciling their respective applicability based on the date of a facility’s construction, modification, or reconstruction, and the true vapor pressure. 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

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<sup>4</sup> This memorandum is available at [https://www.epa.gov/sites/production/files/2018-01/documents/reclassification\\_of\\_major\\_sources\\_as\\_area\\_sources\\_under\\_section\\_112\\_of\\_the\\_clean\\_air\\_act.pdf](https://www.epa.gov/sites/production/files/2018-01/documents/reclassification_of_major_sources_as_area_sources_under_section_112_of_the_clean_air_act.pdf).

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>5</sup>

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

EPA is taking final action to approve the SIP revisions that make changes to the District's Regulation 6.13 and Regulation 7.12. These SIP revisions update the current SIP-approved versions of Regulation 6.13 (Version 6) and Regulation 7.12 (Version 6) to Version 7 of each in the Jefferson County portion of the Kentucky SIP. These rule revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. The changes are administrative in nature and clarify the regulations' applicability.

#### **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:

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<sup>5</sup> *See* 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).

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, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: September 17, 2019.

Mary S. Walker,  
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, in paragraph (c), table 2 is amended:

a. Under “Reg 6—Standards of Performance for Existing Affected Facilities” by revising the entry for “6.13”; and

b. Under “Reg 7–Standards of Performance for New Affected Facilities” by revising the entry for “7.12”.

The revisions 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 6–Standards of Performance for Existing Affected Facilities</b>					
**	*	*	*	*	*
6.13	Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds	[Insert date of publication in the <u>Federal Register</u> ]	[Insert Federal Register citation]	1/17/18	
**	*	*	*	*	*
<b>Reg 7–Standards of Performance for New Affected Facilities</b>					
**	*	*	*	*	*
7.12	Standard of Performance for New Storage Vessels of Volatile Organic Compounds	[Insert date of publication in the <u>Federal Register</u> ]	[Insert Federal Register citation]	1/17/18	
**	*	*	*	*	*

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[FR Doc. 2019-20842 Filed: 9/30/2019 8:45 am; Publication Date: 10/1/2019]