



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2023-0097; FRL-11564-04-R4]

Air Plan Approval; Kentucky; Revisions to Jefferson County Emissions Monitoring and Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving changes 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), via a letter dated June 15, 2022. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District) and amend the District's stationary source emissions monitoring and reporting requirements. EPA is approving 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 Identification No. EPA-R04-OAR-2023-0097. All documents in the docket are listed on the 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 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.

SUPPLEMENTARY INFORMATION:

I. Background

On June 15, 2022,¹ the Commonwealth of Kentucky submitted changes to the Jefferson County portion of the Kentucky SIP for EPA approval.^{2,3} In this rulemaking, EPA is approving changes to Regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting* submitted on June 15, 2022.

Through a notice of proposed rulemaking (NPRM) published on November 20, 2023 (88 FR 80680), EPA proposed to approve these changes to Regulation 1.06. Section 6, *Emissions Statements for Ozone Precursors*, of Regulation 1.06 requires that on or before April 15 of each year, all stationary sources of NO_x or VOC shall submit to the District a statement of actual

¹ On June 15, 2022, Kentucky provided multiple SIP revisions that are not addressed in this rulemaking. One of the June 15, 2022, submittals contains changes to District Regulation 2.04, *Construction or Modification of Major Sources in or Impacting upon Non-Attainment Areas (Emission Offset Requirements)* in the Kentucky SIP. These changes are not addressed in this notice. EPA will act on these changes in a separate rulemaking. Another June 15, 2022, SIP revision contained changes to District Regulation 2.17, *Federally Enforceable District Origin Operating Permits*, in the Kentucky SIP. EPA finalized its approval of changes to Regulation 2.17 on March 1, 2023. See 88 FR 12831.

² EPA received this submission on June 13, 2022, via a letter dated June 15, 2022. Throughout this final rule, this submission will be referred to as the June 15, 2022, submission.

³ In 2003, the City of Louisville and Jefferson County governments merged, and the "Jefferson County Air Pollution Control District" was renamed the "Louisville Metro Air Pollution Control District." However, to be consistent with the terminology used in the subheading in Table 2 of 40 CFR 52.920(c), throughout this notice we refer to the District regulations contained in the Jefferson County portion of the Kentucky SIP as the "Jefferson County" regulations.

emissions of those compounds. In this rulemaking, EPA is finalizing its approval of the District's June 15, 2022, request to incorporate Version 11 of Regulation 1.06 into the SIP, replacing Version 10. Version 10 of Regulation 1.06 at Section 6.2.1 states that facilities with less than 25 tons per year (tpy) of plant-wide actual VOC emissions or less than 25 tpy of plant-wide actual NO_x emissions are exempted from the emissions statement requirements in Section 6, unless emissions of the other pollutant (VOC or NO_x) are at or above 25 tpy. Version 11 revises Section 6.2.1 to instead exempt facilities with less than 25 tpy of plant-wide *potential* VOC *and* less than 25 tpy of plant-wide *potential* NO_x emissions from the Section 6 emissions statement requirement.⁴ The contents of the District's submission, as well as EPA's rationale for approving changes to this regulation, are described in more detail in EPA's November 20, 2023, NPRM. Comments on the November 20, 2023, NPRM were due on or before December 20, 2023. EPA received one comment and responds to this comment in the next section of this rulemaking notice.

II. Response to Comment

EPA received one comment on the November 20, 2023, NPRM. The comment expresses both support for and concern about EPA's proposed action to approve the amendments to Jefferson County's emissions reporting requirements.

Comment: The commenter stated that changing the way emissions are reported could be "very beneficial and more organized," which the commenter finds "especially important if it would help benefit Kentucky residents." The commenter's "only concern is how it would be ensured" that the changes to the emissions reporting requirements would not "decrease the amount of emissions reported." The commenter asks if there are measures put in place to keep plants accountable, noting that "[c]limate change is a very real concern and it is important to hold the power plants that are contributing to change accountable."

⁴ Section 6.2.1 continues to allow the District to require sources claiming the exemption to provide adequate information to verify actual emissions for the previous year.

Response: CAA section 182(a)(3)(B)(i) requires States to submit to EPA a SIP revision requiring the owner or operator of each stationary source of NO_x or VOC in an ozone nonattainment area to report its NO_x and VOC emissions to the State and to certify the accuracy of these reported emissions. Section 182(a)(3)(B)(ii) allows States to waive the requirements under subsection (i) for stationary sources emitting less than 25 tpy of VOC or NO_x if the State provides an inventory of emissions from such class or category of sources.

Jefferson County is subject to the requirements of CAA section 182(a) because it is part of the Louisville, KY-IN moderate nonattainment area for the 2015 8-Hour Ozone National Ambient Air Quality Standards (NAAQS). Regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting*, in the Jefferson County portion of the Kentucky SIP, provides the District with the authority to require emissions monitoring at stationary sources and requires certain sources to maintain emissions records and to provide annual emissions statements to the District.⁵ Section 6, *Emissions Statements for Ozone Precursors*, requires that on or before April 15 of each year, all stationary sources of NO_x or VOC shall submit to the District a statement of actual emissions of those compounds. As discussed above, Version 10 of Regulation 1.06 at Section 6.2.1 states that facilities with less than 25 tpy of plant-wide actual VOC emissions or less than 25 tpy of plant-wide actual NO_x emissions are exempted from the emissions statement requirements in Section 6, unless emissions of the other pollutant (VOC or NO_x) are at or above 25 tpy. In this action, EPA is approving Version 11 into the SIP which revises Section 6.2.1 to instead exempt facilities with less than 25 tpy of plant-wide *potential* VOC and less than 25 tpy of plant-wide *potential* NO_x emissions from the Section 6 emissions statement requirement.⁶

⁵ On March 9, 2022, EPA determined that Regulation 1.06 met the requirements for the 2015 ozone NAAQS for the Jefferson County Area. See 87 FR 13177.

⁶ As discussed in the NPRM, section 6 continues to satisfy the emissions statement requirements in CAA section 182(a)(3)(B).

As noted in the NPRM, the changes do not reduce the number of facilities required to submit emissions statements. Changing the basis for the exemption from *actual* to *potential* emissions does not reduce the number of facilities that must submit emissions statements because potential emissions reflect a facility's maximum capacity to emit a pollutant under its physical and operational design.⁷ Thus, the change from *actual* to *potential* emissions may make fewer facilities eligible for the exemption, thus increasing the number of facilities required to submit emissions statements. Furthermore, the changes do not affect the amount or type of information that must be included in the emissions statements.

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, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of District Regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting*, adopted by the District on March 16, 2022 (referred to as "Version 11" by the District). 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 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.⁸

IV. Final Action

EPA is approving the aforementioned changes to Regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting*, adopted by the District on

⁷ See, e.g., the definition of "potential to emit" in Regulation 1.02, Section 1.61, of the Jefferson County portion of the Kentucky SIP.

⁸ 62 FR 27968 (May 22, 1997).

March 16, 2022, into the Jefferson County portion of the Kentucky SIP. The EPA is approving these changes because they are consistent with the CAA.

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. 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 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 14094 (88 FR 21879, April 11, 2023);
- 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 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- 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.

In addition, 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 and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The District did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 29, 2023.

Jeananne Gettle,
Acting Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 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 table 2 to paragraph (c), under the center heading “Reg 1 – General Provision,” revise the entry for 1.06 to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

Table 2 to Paragraph (c)—EPA-Approved Jefferson County Regulations for Kentucky

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date	Explanation
Reg 1—General Provisions					
**	*	*	*	*	*
1.06	Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting	[Insert date of publication in Federal Register]	[Insert citation of publication]	3/16/2022	Except Section 5 and any references to Section 5 in this regulation.
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