



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0691; FRL-11644-01-R4]

Air Plan Approval; KY; 2015 8-hour Ozone Nonattainment New Source Review Permit Program Requirements and Rule Revision for Jefferson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Jefferson County portion of the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Kentucky Energy and Environment Cabinet (Cabinet) on June 13, 2022. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District, also referred to herein as Jefferson County). EPA is proposing to approve changes to the District's rules on the construction or modification of major stationary sources that are located within nonattainment areas or that have emissions impacting nonattainment areas. EPA also is proposing to approve the certification submitted by Kentucky on behalf of the District that the new version of the Nonattainment New Source Review (NNSR) permitting regulations proposed for incorporation into the Jefferson County portion of the Kentucky SIP meets the NNSR nonattainment planning requirements for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS). The certification covers the Jefferson County portion of the Louisville, Kentucky-Indiana multi-state nonattainment area for the 2015 8-hour ozone NAAQS. This action is proposed pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: 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 No. EPA-R04-OAR-2021-0691 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams-Miles, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303-8960. The telephone number is (404) 562-9144. Ms. Williams-Miles can also be reached via electronic mail at WilliamsMiles.Pearlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The New Source Review (NSR) program is a preconstruction permitting program that requires certain stationary sources of air pollution to obtain permits prior to beginning construction.¹ The NSR permitting program applies to new construction and to the modification of existing sources. New construction and source modifications that cause emissions of

¹ In this proposed action, the EPA refers to “source” as shorthand for “source owner/operator.”

“regulated NSR pollutants” over certain thresholds are subject to major NSR requirements, while smaller emitting sources and modifications may be subject to minor NSR requirements.²

The NSR permitting program applies to sources located in an area where the NAAQS have been exceeded (nonattainment area), areas where the NAAQS have not been exceeded (attainment), and areas that are unclassifiable. However, the demonstration that must be made to obtain a permit and the conditions of such permits are different for nonattainment and attainment/unclassifiable areas. Thus, the pollutant(s) at issue and the air quality designation of the area where the facility is located or proposed to be built determine the specific permitting requirements.

A new stationary source is subject to major NSR requirements if its potential to emit a regulated NSR pollutant exceeds certain emission thresholds. If it exceeds an applicable threshold, the NSR regulations define it as a “major stationary source.”³ An existing major stationary source triggers major NSR permitting requirements when it undergoes a “major modification,” which occurs when a source undertakes a physical change or change in method of operation (*i.e.*, a “project”) that would result in: (1) A significant emissions increase from the project, and (2) a significant net emissions increase from the source. *See, e.g.*, 40 CFR 51.165(a)(1)(v)(A), 40 CFR 51.165(a)(1)(xxxix), and 40 CFR 51.165(a)(2)(ii)(A).

Jefferson County is located within a nonattainment area for the 2015 8-hour ozone NAAQS. *See* 40 CFR 81.318; *see also* EPA’s Greenbook.⁴ Therefore, Jefferson County is required to have NNSR rules approved into the Jefferson County portion of the Kentucky SIP for

² “Regulated NSR pollutant” is defined at 40 CFR 52.21(b)(50). A “regulated NSR pollutant” includes any pollutant for which a NAAQS has been promulgated and other pollutants regulated under the CAA. These other pollutants include, among others, fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds. *See, e.g.*, 40 CFR 52.21(b)(23). For NNSR, regulated NSR pollutants include only the NAAQS, also known as criteria pollutants, and the precursors to those pollutants for which the area is designated nonattainment. *See* 40 CFR 51.165(a)(1)(xxxvii).

³ For major sources subject to Prevention of Significant Deterioration (PSD) requirements, the CAA uses the term “major emitting facility,” which is defined as a stationary source that emits, or has a potential to emit (PTE) of, at least 100 tons per year (tpy) if the source is in one of 28 listed source categories—or at least 250 tpy if the source is not—of “any air pollutant.” CAA section 169(1). For NNSR, the emissions threshold for a major stationary source is 100 tpy, although lower thresholds may apply depending on the degree of the nonattainment problem and the pollutant.

⁴ The Kentucky portion of the Greenbook is available at https://www3.epa.gov/airquality/greenbook/anayo_ky.html.

this criteria pollutant addressing the requirements of CAA section 172(c)(5), CAA section 173, 40 CFR 51.165, and 40 CFR 51.1314.

II. Analysis of the Commonwealth's Submittal

The Commonwealth has proposed changes to Regulation 2.04 – *Construction or Modification of Major Sources In or Impacting Upon Non-Attainment Areas (Emission Offset Requirements)* in the Jefferson County portion of Kentucky's SIP. EPA's analysis of the Commonwealth's proposed revisions to Regulation 2.04 is provided below.

a. CAA Requirements Regarding the Changes to Regulation 2.04

Based on Jefferson County's nonattainment designation for the 2015 8-hour ozone NAAQS, Kentucky was required to develop a SIP revision addressing the requirements of CAA sections 172(c)(5) and 173 for this nonattainment area. Section 172(c)(5) requires each state with a nonattainment area to submit a SIP revision requiring NNSR permits in the nonattainment area in accordance with the permitting requirements of CAA section 173.⁵ The minimum SIP requirements for NNSR permitting for the ozone NAAQS are in 40 CFR 51.165. *See* 40 CFR 51.1314. The proposed revisions to Regulation 2.04 must comply with these minimum requirements.

On June 13, 2022, Kentucky submitted a SIP revision⁶ to EPA that includes changes to the District's Regulation 2.04, which establishes requirements for Jefferson County's NNSR program, along with a certification that this updated version of Regulation 2.04 satisfies the requirements of the CAA for the 2015 8-hour ozone NAAQS applicable to the Jefferson County portion of the Louisville, KY-IN 2015 ozone moderate nonattainment area.⁷

b. Changes to Regulation 2.04

⁵ CAA section 173 requires, among other things, emissions offsets. The emissions offset ratio for moderate ozone nonattainment areas is found in CAA section 182(b)(5).

⁶ The June 13, 2022, submission was received via a letter dated June 15, 2022.

⁷ On July 13, 2021, Kentucky, on behalf of Jefferson County, submitted a certification that the current SIP-approved version of Regulation 2.04 fulfills requirements of the NNSR program. Jefferson County withdrew that submission on June 13, 2022, and replaced it with a SIP revision containing changes to District Regulation 2.04 and an updated certification that the modified version of Regulation 2.04 complies with NNSR requirements for the 8-hour ozone NAAQS as addressed in this proposed rulemaking.

The Jefferson County June 13, 2022, SIP revision includes changes to Jefferson County's NNSR permitting regulations to align those regulations with the federal requirements for NNSR permitting in 40 CFR 51.165. Specifically, these changes update Jefferson County's Regulation 2.04 – *Construction or Modification of Major Sources In or Impacting Upon Non-Attainment Areas (Emission Offset Requirements)*, which applies to new major stationary sources and major modifications locating in an area designated as nonattainment.^{8,9} EPA last approved amendments to Regulation 2.04 in the SIP on October 23, 2001, with a local effective date of March 17, 1993. *See* 66 FR 53660. Approximately twenty-nine years have passed between this local effective date and the local effective date of Jefferson County's updated Regulation 2.04 that EPA is now proposing to approve into the SIP. The June 13, 2022, SIP revision aims to align the Jefferson County regulations with the most recent version of 40 CFR 51.165, which sets forth minimum NNSR permitting program requirements.

Since the last time EPA approved amendments to Regulation 2.04, EPA has updated the federal NNSR regulations in 40 CFR 51.165 to clarify provisions, provide greater regulatory certainty, and provide administrative flexibility while correcting certain errors in the NNSR regulations that had accumulated over time. Jefferson County's requested SIP revision replaces the District's NNSR regulations largely in their entirety with a new version that reflects changes to the federal NNSR regulations at 40 CFR 51.165, including provisions promulgated in the following federal rules:

- “Requirements for Preparation, Adoption and Submittal of Implementation Plans;

Approval and Promulgation of Implementation Plans; Standards of Performance for New

⁸ Under the June 13, 2022, cover letter, Jefferson County also submitted updates to the following District Regulations: Regulation 1.06 – Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting and Regulation 2.17 – Federally Enforceable District Origin Operating Permits. These rules will be acted on separately by EPA.

⁹ The existing sections in the redline strike-through text of the submittal appear are misnumbered. *Section 1* is repeated twice – once at *Section 1 Applicability* and again at *Section 1 Definitions*. For example, *Section 9 Permit Condition Rescission* is marked as Section 8 in the redline strike-through text of the submission. The erroneous numbering extends throughout the entirety of Regulation 2.04. The text in each section is accurate despite the misnumbering, and this misnumbering is not contained in the non-redline version of the regulatory text contained within the submittal.

Stationary Sources,” Final Rule, 57 FR 32314 (July 21, 1992) (generally referred to as the Wisconsin Electric Power Company (WEPCO) Rule);

- “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects,” Final Rule, 67 FR 80186 (December 31, 2002) (generally referred to as the NSR Reform Rule);
- “Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Reconsideration,” Final Rule, 68 FR 63021 (November 7, 2003) (generally referred to as the Reconsideration Rule);
- “Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Removal of Vacated Elements,” Final Rule, 72 FR 32526 (June 13, 2007) (generally referred to as the Vacated Elements Rule);
- “Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V: Treatment of Certain Ethanol Production Facilities Under the ‘Major Emitting Facility’ Definition”, 72 FR 24060 (July 2, 2007) (generally referred to as the Ethanol Rule);¹⁰
- “Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping,” Final Rule, 72 FR 72607 (December 21, 2007), (generally referred to as the Reasonable Possibility Rule);
- “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated

¹⁰ The June 13, 2022, submittal contains changes to address to the Federal NNSR provisions promulgated in the Ethanol Rule. EPA is not proposing to act on these changes in this proposed rulemaking.

Gasoline,” Final Rule, 70 FR 71612 (November 29, 2005) (generally referred to as the Phase 2 Rule);

- “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}),” Final Rule, 73 FR 28321 (May 16, 2008) (generally referred to as the NSR PM_{2.5} Rule);
- “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC),” Final Rule, 75 FR 64864 (October 20, 2010) (generally referred to as the PM_{2.5} PSD Increments-SILs-SMC Rule);
- “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions; Interim Rule; Stay and Revisions”, Interim Rule, 76 FR 17548 (March 30, 2011) (generally referred to as the Fugitive Emissions Interim Rule);
- “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting”, 85 FR 74890 (November 24, 2020) (generally referred to as the Project Emissions Accounting Rule); and
- “New Source Review Regulations; Correction”, 86 FR 37918 (July 19, 2021) (generally referred to as the NSR Corrections Rule).

Additional information regarding each of the above-described rules is available within the Federal Register citations provided and at <https://www.epa.gov/nsr/nsr-regulatory-actions>. More detailed discussion of the textual changes proposed by Jefferson County is provided below.

Section 1 – As revised, the existing *Section 1, Applicability*, is now titled *Definitions*.

The text of the existing section, which identifies sources that are regulated by Regulation 2.04, is removed in its entirety, and replaced with the *Definitions* section, which has been relocated from *Section 2*.

The proposed definitions in *Section 1* would modify, add, or remove existing definitions currently found in *Section 2* and reorder several definitions. The definitions that are removed include: “Reasonable further progress,” “Adverse impact on visibility,” “State Implementation Plan,” “Mandatory Class I federal area,” “Natural conditions,” and “Visibility impairment.” Jefferson County’s June 13, 2022, SIP revision also includes the removal of the definition, “Class I area.” However, the District has since withdrawn its request for this change.¹¹

New definitions are added in *Section 1*, which include: “Volatile organic compounds (VOC),” “Electric utility steam generating unit,” “Replacement unit,” “Temporary clean coal technology demonstration project,” “Clean coal technology,” “Clean coal technology demonstration project,” “Pollution prevention,” “Significant emissions increase,” “Projected actual emissions,” “Nonattainment major new source review (NSR) program,” “Continuous emissions monitoring system (CEMS),” “Predictive emissions monitoring system (PEMS),” “Continuous parameter monitoring system (CPMS),” “Continuous emissions rate monitoring system (CERMS),” “Baseline actual emissions,” “Regulated NSR pollutant,” “Reviewing authority,” “Project,” “Best available control technology (BACT),” “Prevention of Significant Deterioration (PSD) permit,” “Federal Land Manager,” “Act,” “Administrator,” and “NAICS.” Among the additions, three entries labeled “[Reserved]” are added at 1.25, 1.29, and 1.36. Lastly, the following definitions have been modified: “Stationary source,” “Building, structure, facility, or installation,” “Secondary emissions,” “Actual emissions,” “Emissions unit,” “Major stationary source,” “Major modification,” “Net emission increase,” “Potential to emit,” “Construction,” “Commence,” “Necessary preconstruction approval or permits,” “Allowable emissions,” “Federally enforceable,” “Fugitive Emissions,” “Significant,” and “Lowest achievable emission rate.”

¹¹ In a letter dated August 24, 2023, the District withdrew its request to remove Section 2.2.20 of Regulation 2.04 from the SIP, which defines “Class I area,” from EPA’s consideration. In a subsequent email dated November 14, 2023, the District clarified that the withdrawal of the June 13, 2022, request to remove from the SIP Regulation 2.04 version 7 Section 2.2.20, includes all subparagraphs within the definition (*i.e.*, 2.2.20.1 through 2.2.20.7). See the August 24, 2023, letter, and the November 14, 2023, clarifying correspondence in the docket for this proposed rulemaking.

Certain definitions were also revised to remove outdated terminology and align the rules with the Federal regulations at 40 CFR 51.165. EPA is proposing to approve these definitional revisions, except that EPA is not proposing at this time to approve into the SIP the following phrase in the definition at 1.4.3.20 originating from the Ethanol Rule: “– The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140”. The remaining definitions (*i.e.*, those neither modified nor removed in *Section 2*) were moved into *Section 1* unchanged.

Section 2 – As revised, the existing *Section 2, Definitions*, is now titled *Applicability Procedures*. As mentioned above, the terms and definitions in the existing *Section 2* are relocated to *Section 1* as part of the proposed changes. The revised *Section 2* includes revised applicability provisions of Rule 2.04, including three subsections that: (1) Define which sources are subject to regulation under Rule 2.04, (2) outline the procedures for determining whether a project is a major modification for a regulated NSR pollutant, and (3) require that any major stationary source with a plantwide applicability limit (PAL) for a regulated NSR pollutant comply with requirements under section 16 of Rule 2.04.

Section 3 – As revised, the existing *Section 3, Initial Screening Analyses and Determination of Applicable Requirements*, is now titled *Conditions for Approval*. The existing text of *Section 3* requires the District to evaluate a source’s compliance with applicable emission requirements to determine their eligibility for a construction permit. The regulation also requires that the District evaluate a source’s impact on air quality to determine whether offset credits are required. Lastly, the regulation exempts certain sources from applicable conditions for approval established in the existing *Section 5* text, and visibility impact analysis addressed in *Section 10*, if the source’s fugitive emissions are considered in calculating the source’s potential to emit and the source does not belong to specified source categories. The revised *Section 3* provides the conditions that new major stationary sources or major modifications must meet prior to approval of construction in an area designated as nonattainment.

Section 4 – As revised, the existing *Section 4, Sources Locating in Designated Attainment or Unclassifiable Areas*, is now titled *Baseline*. The existing *Section 4* provisions regulate new major stationary sources and major modifications of existing sources in areas designated as attainment or unclassifiable if the source or modification would cause impacts which exceed the significance levels specified in Appendix B at any locality that does not, or would not, meet the NAAQS. The proposed changes to this rule remove these provisions in their entirety from *Section 4* and move them, with revisions compliant with 40 CFR 51.165, to *Section 15*. The revised *Section 4* establishes baseline emissions limits for which emission reduction credits are determined. The text added in this section regulates allowable credits and includes provisions pertaining to credits for shutting down an existing emissions unit, the replacement of one hydrocarbon compound with another of lesser reactivity, the requirement that offset credits be federally enforceable, offset requirements for owners of new sources and modifying sources, and limitations on credit claimed.

Section 5 – As revised, the existing *Section 5, Conditions for Approval*, is now titled *Fugitive Emissions*. The existing *Section 5* regulates the conditions for approval to construct in a nonattainment area. As revised, the text under this section is removed in its entirety and, as mentioned above, conditions for approval are discussed in the proposed language of revised *Section 3*. The proposed language in the revised *Section 5* establishes how fugitive emissions should be treated when evaluating NNSR applicability. EPA is not proposing to incorporate the language originating from the Ethanol Rule within Section 5.20, which states that “The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140,” into the Jefferson County portion of Kentucky’s SIP in this notice.

Section 6 – As revised, the existing *Section 6, Baseline for Determining Credit for Emission Offsets*, is now titled *Effect of Other Requirements*. The existing *Section 6* establishes the requirements for determining baseline emissions. This section is moved in its entirety to

Section 4. The proposed language of the revised *Section 6* requires an owner or operator to comply with any requirements under local, state, or Federal law even after approval to construct has been given. Additionally, the revised *Section 6* establishes that when a relaxation of an enforcement limitation occurs and a source or modification is deemed a major source due to its capacity to emit a pollutant, the requirement of this provision will then apply to the source or modification in a manner as if construction had not commenced.

Section 7 – As revised, the existing *Section 7, Administrative Procedures*, is now titled *Applicability Recordkeeping and Reporting*. The existing text of *Section 7* regulates the administrative procedures for managing source-initiated and District-initiated emission offsets, which are enforceable by the District and EPA. The proposed changes in *Section 7* remove the text for administrative procedures in its entirety and replace it with provisions on applicability recordkeeping and reporting. As revised, *Section 7* provides specific recordkeeping and reporting provisions for any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) where there is a “reasonable possibility” that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the actual-to-projected-actual applicability process for calculating projected actual emissions.

Section 8 – As revised, the existing *Section 8, Source Obligation*, is now titled *Availability of Documentation*. The existing language of *Section 8* describes a source’s compliance obligations and the enforcement that may be taken against the source when the source fails to comply with these obligations. The failure to comply may occur when a source relaxes an enforceable emissions limitation such that the particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation or when the source initiates construction of a source prior to obtaining a required permit. The proposed changes in *Section 8* include the removal of the existing text in its

entirety and the addition of requirements for owners or operators to present documentation required by *Section 7* upon request by the District or the general public.

Section 9 – As revised, the existing *Section 9, Permit Condition Rescission*, is now titled *Applicability of VOC Requirements to Major Sources of NO_x*. The existing text under *Section 9* regulates the rescission of permits that were issued prior to April 21, 1982. The proposed changes include removal of this text in its entirety. As revised, *Section 9* provides that “[t]he requirements of this regulation applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area” except where the EPA Administrator has granted a NO_x waiver.

Section 10 – The proposed changes include the addition of a new *Section 10, Offset Ratio*, which establishes the offset ratio provisions to accompany the conditions for approval provided in *Section 3*.¹²

Section 11 – The proposed changes include the addition of a new *Section 11, Applicability to PM₁₀ Precursors*. This section provides that the requirements of Regulation 2.04 applicable to major stationary sources and major modifications of particulate matter with a diameter of 10 microns or less (PM₁₀) shall also apply to major stationary sources and major modifications of PM₁₀ precursors, except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels that exceed the PM₁₀ ambient standards in the area.

Section 12 and Section 13 – Sections 12 and 13 are added as “Reserved” sections for future use.

Section 14 – The proposed changes include the addition of a new *Section 14, Applicability to PM_{2.5} Precursors*. This section provides that the control requirements of

¹² In a letter dated August 24, 2023, the District withdrew its request to remove *Section 10 - Protection of Visibility*, from EPA’s consideration. Keeping *Section 10 - Protection of Visibility* in the SIP allows the Commonwealth to maintain visibility provisions for the Jefferson County area in accordance with 40 CFR 51.307(b)(2). The request to add *Section 10 – Offset Ratio* remains before EPA for consideration. The withdrawal would leave two sections numbered “10” in Rule 2.04: one locally effective on March 13, 1993, and the other locally effective on March 16, 2022. The District intends to address the duplicate numbering in a future submission.

Regulation 2.04 applicable to major stationary sources and major modifications of PM_{2.5} shall also apply to major stationary sources and major modifications of PM_{2.5} precursors in a PM_{2.5} nonattainment area, except that a reviewing authority may exempt new major stationary sources and major modifications of a particular precursor from the requirements of the rule for PM_{2.5} if the NNSR precursor demonstration submitted to and approved by EPA shows that such sources do not contribute significantly to PM_{2.5} levels that exceed the standard in the area.

Section 15 – The proposed changes include the addition of a new *Section 15, Applicability of Regulation in Attainment Areas*. This section applies to any new major stationary source or major modification, as defined in paragraphs 1.4 and 1.5 of Regulation 2.04, that would locate in any area designated as attainment or unclassifiable for any NAAQS when it would cause or contribute to a violation of any NAAQS. This section also includes the significance levels above which a source would be considered to cause or contribute to a violation of the NAAQS. It also provides that applicable sources may obtain sufficient emissions reductions to compensate for their impact on air quality. Lastly, the revised regulations clarify that *Section 15* sources need not be subject to the provisions of Section 15 for a regulated NSR pollutant if they can demonstrate that the area in which the source would be located is not in attainment for that particular regulated pollutant.

Section 16 – The proposed changes include the addition of a new *Section 16, Actuals PALs*. This section establishes the provisions in which a reviewing authority may approve the use of an actuals PAL for any existing major stationary source and establishes relevant definitions pertaining to PALs. This section contains PAL regulations, including the requirements related to permit applications, public notice and comment, the establishment of PAL levels, and the components a PAL permit.

Section 17 and Section 18 – *Sections 17 and 18* are added as “Reserved” sections for future use.

Section 19 – The proposed changes include the addition of a new *Section 19, Public participation requirements*. This section establishes the reviewing authority’s responsibility to notify the public of a draft permit and establishes how the notification must take place.

Appendix A and Appendix B – As revised, existing *Appendix A, Significant Pollutant and Emission Rate*, and existing *Appendix B, Significant Levels of Air Quality Impact*, are removed in their entirety. The information that is provided in existing *Appendix A and Appendix B* is condensed into chart form in the revised *Section 15*. PM_{2.5} and PM₁₀ are defined in Regulation 1.02.

c. Nonattainment New Source Review Certification

Jefferson County has a longstanding and fully implemented NNSR program that establishes air quality permitting requirements for the construction or modification of major stationary sources located within areas designated as nonattainment. The program, found at Jefferson County Regulation 2.04, *Construction or Modification of Major Sources in or Impacting upon Nonattainment Areas (Emission Offset Requirements)*, contains NNSR permitting requirements for the Jefferson County portion of the Kentucky SIP.¹³ In its June 13, 2022, SIP revision, Kentucky, on behalf of the District, certified that the version of Regulation 2.04 proposed for incorporation into the Jefferson County portion of the Kentucky SIP satisfies the Federal NNSR requirements for the Jefferson County portion of the Louisville, KY-IN 2015 ozone moderate nonattainment area. The version of Regulation 2.04 that is contained in the current Jefferson County portion of the Kentucky SIP was approved into the SIP by EPA on October 23, 2001, *see* 66 FR 53658, and was state effective as of March 17, 1993.

¹³ 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.” *See* The History of Air Pollution Control in Louisville, available at <https://louisvilleky.gov/government/air-pollution-control-district/history-air-pollution-control-louisville>. However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading “Air Pollution Control District of Jefferson County.” Thus, to be consistent with the terminology used in the SIP, EPA refers throughout this notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the “Jefferson County Regulations.”

As revised, Regulation 2.04 provides requirements for the 2015 ozone moderate nonattainment area for Jefferson County and remains adequate to meet all applicable NNSR requirements for the 2015 8-hour ozone NAAQS. EPA is therefore proposing to approve the District's certification, submitted on its behalf by Kentucky, that Jefferson County Regulation 2.04, as proposed for incorporation into the SIP, meets the NNSR requirements for implementation of the 2015 8-hour ozone NAAQS.

d. Clean Air Act Sections 110(l) and 193

Section 110(l) of the CAA requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. As noted above, since the last time EPA approved amendments to Regulation 2.04, with a local effective date of March 17, 1993, EPA has updated the Federal NNSR regulations in 40 CFR 51.165 several times. These revisions include NSR Reform and the related Reasonable Possibility Provisions implemented through the December 31, 2002, final rule (67 FR 80186), with revisions per the November 7, 2003, final rule (68 FR 63021), the June 13, 2007, final rule (72 FR 32526), and the December 21, 2007, final rule (72 FR 72607) along with the adoption of the Project Emissions Accounting Rule. 85 FR 74890 (November 24, 2020). The District's updates to Regulation 2.04 are intended to align its NNSR rules with EPA's current NNSR rules in 40 CFR 51.165. As discussed below, EPA's proposed approval of the District's Regulation 2.04 into the Jefferson County portion of the Kentucky SIP is consistent with CAA section 110(l) and CAA section 193.

EPA's national analysis in support of the 2002 NSR Reform Rules indicates that the non-vacated provisions of the NSR Reform Rules will have a neutral or beneficial impact. The three significant changes in the 2002 NSR Reform Rules are: (1) PALs, (2) the 2-in-10 baseline, and (3) the actual-to-projected-actual applicability test. EPA's Supplemental Environmental

Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002)

(Supplemental Analysis)¹⁴ discussed each of these three changes individually.

With regard to PALs, the Supplemental Analysis explains, “EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits.” Supplemental Analysis, pg. 6. EPA further explained that, while it is difficult to quantify the emissions reductions associated with PALs, the PAL program will likely result in tens of thousands of tons of reductions of VOC from source categories where frequent operational changes are made, where these changes are time sensitive, and where there are opportunities for economical air pollution control measures. These reductions occur because by creating a tons per year plantwide emissions limit for a regulated NSR pollutant, sources have an incentive to control existing and new units in order to provide room under the cap such that the source can undertake subsequent operational changes over the life of the PAL. Supplemental Analysis, pg. 7. The Supplemental Analysis, and particularly Appendix B, provides additional details regarding EPA’s analysis of PALs and anticipated associated emissions decreases.

With regard to the 2-in-10 baseline (see 40 CFR 51.165(a)(1)(xxxv)(B)), EPA concluded that “the environmental impact from the change in baseline EPA is now finalizing will not result in any significant change in benefits derived from the NSR program.” Supplemental Analysis at 13. This is mainly because “the number of sources receiving different baselines likely represents a very small fraction of the overall NSR permit universe, excludes new sources and coal fired power plants, and because the baseline may shift in either direction, we conclude that any overall consequences would be negligible.” Supplemental Analysis, pg. 14. Additional information regarding the 2-in-10 baseline changes is available in the Supplemental Analysis, Appendix F.

¹⁴ The Supplemental Analysis is available at <https://www.epa.gov/sites/default/files/2015-08/documents/nsr-analysis.pdf>.

With regard to the actual-to-projected-actual test, EPA concluded, “We believe that the environmental impacts of the switch to the actual-to-projected actual test are likely to be environmentally beneficial. However, as with the change to the baseline, we believe the vast majority of sources, including new sources, new units, electric utility steam generating units, and units that actually increase emissions as a result of a change, will be unaffected by this change. Thus, the overall impacts of the NSR changes are likely to be environmentally beneficial, but only to a small extent.” Supplemental Analysis, pg. 14 (see also Supplemental Analysis Appendix G). EPA has no reason to believe that the environmental impacts will be substantially different from those discussed in the Supplemental Analysis for the 2002 NSR Reform Rules. Therefore, adopting the NSR Reform provisions into the Jefferson County portion of the Kentucky SIP is consistent with CAA section 110(l).

Regarding the adoption of the Project Emissions Accounting (PEA) Rule, as EPA noted in the response to comments document for the PEA Rule, “implementation of [the PEA Rule] will not cause states to violate the anti-backsliding requirements of the Clean Air Act. Allowing for PEA is consistent with the intent of the 2002 NSR Reform Rule and is more consistent with the Act than implementing Step 1 without PEA. That is because PEA would not subject a project which does not significantly increase emissions in and of itself, or actually result in a decrease [in] emissions, from being subject to NSR.” *See Response to Comments Document on Proposed Rule: ‘Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting’—84 FR 39244, August 9, 2019 (October 2020), at pg. 114.* Therefore, adopting the PEA provisions into the Jefferson County portion of the Kentucky SIP is consistent with CAA section 110(l).

Section 193 of the CAA prohibits modification of any control requirement in effect before November 15, 1990, in a current nonattainment area, unless the modification “insures equivalent or greater emissions reductions.” Section 193 does not apply here because the state-effective date of Louisville’s Regulation 2.04 is March 17, 1993. Additionally, EPA anticipates

a neutral to positive air quality benefit from adoption of these rules, and therefore these rules will ensure “equivalent or greater emission reductions” of air pollution in accordance with CAA section 193.

III. 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, and as discussed in Sections I and II of this preamble, EPA is proposing to incorporate by reference Jefferson County Regulation 2.04, Version 8, “*Construction or Modification of Major Sources in or Impacting upon Non-Attainment Areas (Emission Offset Requirements)*,” locally effective on March 16, 2022, except for the ethanol production facilities exclusion in Sections 1.4.3.20 and 5.20, which EPA is not proposing to act on at this time. Additionally, EPA proposes to maintain Sections 2.2.20 and 10 from Version 7 of Regulation 2.04, locally effective on March 17, 1993.¹⁵ 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).

IV. Proposed Action

EPA is proposing to approve changes to the Jefferson County portion of the Kentucky SIP, submitted on June 13, 2022, with the exception of the ethanol production facilities exclusion in Regulations 1.4.3.20 and 5.20, which EPA is not proposing to act on at this time. These revisions will align Jefferson County Regulation 2.04, with Federal NNSR regulations at 40 CFR 51.165. Additionally, EPA is proposing to approve Jefferson County’s certification of NNSR requirements for the 2015 8-hour ozone NAAQS for the Jefferson County portion of the Louisville, KY-IN 2015 ozone moderate nonattainment area which meets the requirements of CAA sections 172(c)(5) and 173 and 40 CFR 51.165 and 51.1314. EPA has determined that the requested changes in Kentucky’s June 13, 2022, SIP revision will not interfere with any

¹⁵ See footnotes 11 and 12.

applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of 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 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 proposed action merely proposes to approve 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 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.”

Jefferson County evaluated EJ considerations as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The analysis was done for the purpose of providing additional context and information about this proposed rulemaking to the public, not as a basis of the proposed action. EPA is proposing action under the CAA on bases independent of Jefferson County’s evaluation of EJ. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of EO 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Dated: January 16, 2024.

Jeananne Gettle,
Acting Regional Administrator,
Region 4.