



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2023-0338; FRL-11798-01-R4]

Air Plan Approval; KY; Revisions to Jefferson County Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted on May 31, 2023, by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on behalf of the Louisville Metro Pollution Control District (Jefferson County or District). The purpose of the revision is to modify the SIP-approved version of the District’s definitions rule to include a list of “trivial activities” in a new appendix; update the incorporation by reference date of the Federal air quality regulation that excludes certain organic compounds from the definition of “volatile organic compounds (VOC);” and make minor grammatical changes. EPA is proposing to approve the changes pursuant to the Clean Air Act (CAA or Act).

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-2023-0338 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.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: Simone Jarvis, 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) 562-8393. Ms. Jarvis can also be reached via electronic mail at jarvis.simone@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 31, 2023, KDAQ, on behalf of the District, submitted changes to the Jefferson County portion of the Kentucky SIP for EPA approval.¹ In this proposed rulemaking, EPA is proposing to approve changes to Jefferson County Regulation 1.02, *Definitions*.²

II. EPA's Analysis of Kentucky's SIP Revision

The May 31, 2023, SIP revision contains a version of Regulation 1.02, *Definitions*, that was adopted by the District on March 15, 2023 (referred to as "Version 16" by the District). The District requests that EPA incorporate Version 16 into the SIP and identifies changes in Regulation 1.02 between Version 16 and Version 15, which is the version of the rule currently in the SIP.

The District's first proposed change is the addition of Appendix B to Section 1, which

¹ The May 31, 2023, submittal also contains changes to Jefferson County Regulation 1.11, *Control of Open Burning*, in the Jefferson County portion of the Kentucky SIP. EPA intends to address these changes in a separate rulemaking.

² 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.

lists “trivial activities,” and the modification to the definition of “trivial activities” at subsection 1.80 to reference Appendix B.³ The SIP-approved definition of “trivial activities” states that the District will maintain a list of trivial activities that shall be made available to the public upon request. This list has not changed since it was created in 1995 in response to the EPA White Paper for Streamlined Development of Part 70 Permit Applications.⁴ This change would only incorporate the list into the SIP and would not alter the activities listed therein.

The District’s second proposed change is to the definition of “volatile organic compound” at subsection 1.84. Subsection 1.8.4.1 incorporates by reference 40 CFR 51.100(s)(1) which lists compounds excluded from the Federal definition of “volatile organic compounds (VOC)” at 40 CFR 51.100(s). The change updates the incorporation by reference date from July 1, 2018, to July 1, 2022, which has the effect of adding an organic compound, cis-1,1,1,4,4,4-hexafluorobut-2-ene (also known as HFO-1336mzz-Z), to the list of compounds excluded from the definition of VOC. EPA exempted this compound from the Federal definition of “volatile organic compounds (VOC)” because its contribution to the formation of tropospheric ozone is negligible. *See* 83 FR 61127 (November 28, 2018).

The District’s third proposed change is a set of minor grammatical changes. For example, the Section 1 preamble is changed from “in the District’s regulations” to “in District regulations.” Given the nature of this change and the changes described above, the SIP revision will not interfere with any applicable requirement concerning attainment of the national ambient air quality standards, reasonable further progress, or any other applicable requirement of the CAA.⁵ EPA is proposing to approve all changes to Regulation 1.02 except for the grammatical edit to the term “acute noncancer effect,” because that term is not in the SIP.⁶

³ The revised version of subsection 1.80 reads “‘Trivial activities’ means any activity that is considered inconsequential, as determined by the District, and included in Appendix B to this Regulation.”

⁴ Attachment A to the EPA White Paper contains a list of activities that may be treated as trivial. The White Paper is available at: <https://www.epa.gov/title-v-operating-permits/white-paper-streamlined-development-part-70-permit-applications>.

⁵ *See* CAA section 110(l).

⁶ *See* 81 FR 87815 (December 6, 2016), 82 FR 35101 (July 28, 2017).

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 Section II of this preamble, EPA is proposing to incorporate by reference Jefferson County Regulation 1.02, *Definitions* (except for the definition of “Acute noncancer effect”), Version 16, District-effective on March 15, 2023, which updates exclusions to the definition of “volatile organic compound” and includes Appendix B which lists “trivial activities.” 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 the changes to Regulation 1.02, *Definitions* (except for the change to the definition of “Acute noncancer effect”), of the Jefferson County portion of the Kentucky SIP, submitted by the Commonwealth on May 31, 2023, for the reasons discussed above. The SIP revision updates the current SIP-approved version of Regulation 1.02 (Version 15) to Version 16.

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.”

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 proposed action. Due to the nature of the action being proposed here, this proposed 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 proposed 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: March 1, 2024.

Jeaneanne Gettle,
Acting Regional Administrator,
Region 4.

