



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2021-0691; FRL-11644-02-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:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving 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 approving 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 approving the certification submitted by Kentucky on behalf of the District that the new version of the Nonattainment New Source Review (NNSR) permitting regulations 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 pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

**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-2021-0691. 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](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 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:** Sarah LaRocca, 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) 562-8994. Ms. LaRocca can also be reached via electronic mail at [LaRocca.Sarah@epa.gov](mailto:LaRocca.Sarah@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. The NSR permitting program applies to new construction and to the modification of existing 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 unclassified.

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.<sup>1</sup> Therefore, Jefferson County is required to have NNSR rules approved into the Jefferson County portion of the Kentucky SIP for this criteria pollutant addressing the requirements of CAA section 172(c)(5), CAA section 173, 40 CFR 51.165, and 40 CFR 51.1314.

Through a notice of proposed rulemaking (NPRM) published on January 19, 2024 (89 FR 3613), EPA proposed to approve changes to the District's Regulation 2.04, *Construction or Modification of Major Sources In or Impacting Upon Non-Attainment Areas (Emission Offset Requirements)*, 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.<sup>2</sup> In this rulemaking, EPA is finalizing its approval of the District's June 13, 2022,<sup>3,4</sup> request to incorporate Version 8<sup>5</sup> of Regulation 2.04 and certification, for incorporation into the SIP, as meeting the NNSR requirements for implementation of the 2015 8-hour ozone NAAQS. EPA's rationale for approving the changes is described in the January 19, 2024, NPRM. Comments on the January 19, 2024, NPRM were due on or before February 20, 2024. No comments were received on the January 19, 2024, NPRM, adverse or otherwise.

## **II. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this

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<sup>1</sup> The Kentucky portion of the Greenbook is available at [https://www3.epa.gov/airquality/greenbook/anayo\\_ky.html](https://www3.epa.gov/airquality/greenbook/anayo_ky.html).

<sup>2</sup> 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 rulemaking.

<sup>3</sup> The June 13, 2022, submission was received via a letter dated June 15, 2022.

<sup>4</sup> As discussed in the January 19, 2024, NPRM, the June 13, 2022, submission contains changes to address the federal NNSR provisions promulgated in the Ethanol Rule. EPA is not acting on those changes in this rulemaking.

<sup>5</sup> EPA is retaining Sections 2.2.20 and 10 from Version 7 of Regulation 2.04.

preamble, EPA is finalizing the incorporation by reference of 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. Additionally, EPA is retaining Sections 2.2.20 and 10 from Version 7 of Regulation 2.04, locally effective on March 17, 1993.<sup>6,7</sup> 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 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>8</sup>

### **III. Final Action**

EPA is approving 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 Sections 1.4.3.20 and 5.20, which EPA is not acting 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 approving 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

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<sup>6</sup> 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 rulemaking.

<sup>7</sup> 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.

<sup>8</sup> 62 FR 27968 (May 22, 1997).

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 applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 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.”

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 taking 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.

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

Dated: March 1, 2024.

**Jeanne 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(c), in table 2 under the center heading “Reg 2 – Permit Requirements,”

revise the entry for 2.04 to read as follows:

**§ 52.920 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**Table 2 to Paragraph (c)—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>
Reg 2 – Permit Requirements					
**	*	*	*	*	*
2.04	Construction or Modification of Major Sources in or Impacting upon Non-Attainment Areas (Emission Offset Requirements)	[Insert date of publication in Federal Register]	[Insert citation of publication]	3/16/2022	Except for the ethanol production facilities exclusion in Sections 1.4.3.20 and 5.20. Additionally, EPA is retaining Sections 2.2.20 and 10 from Version 7 of Regulation 2.04, locally effective on March 17, 1993.
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