



## 40 CFR Part 52

### [EPA-R04-OAR-2023-0338; FRL-11798-02-R4]

#### **Air Plan Approval; KY; Revisions to Jefferson County Definitions**

**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 Kentucky Energy and Environment Cabinet (Cabinet) on May 31, 2023. 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 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. 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-2023-0338. 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:** Simone Jarvis, 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) 562-8393. Ms. Jarvis can also be reached via electronic mail at [Jarvis.Simone@epa.gov](mailto:Jarvis.Simone@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On May 31, 2023, the Commonwealth of Kentucky submitted changes to the Jefferson County portion of the Kentucky SIP for EPA approval.<sup>1,2</sup> In this rulemaking, EPA is approving changes to Regulation 1.02, *Definitions*.

Through a notice of proposed rulemaking (NPRM) published on March 7, 2024 (89 FR 16496), EPA proposed to approve changes to the District's Regulation 1.02, *Definitions*, which included a list of "trivial activities" in a new appendix, updated 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 made minor grammatical changes. In this rulemaking, EPA is finalizing its approval of the District's May 31, 2023, request to

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<sup>1</sup> 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.

<sup>2</sup> 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.

incorporate Version 16 of Regulation 1.02 into the SIP, replacing Version 15. EPA is not approving the change to the definition of “Acute noncancer effect” because that definition is not approved into the SIP, and EPA is not incorporating that definition into the SIP from Version 16. EPA’s rationale for approving the changes is described in the March 7, 2024, NPRM. Comments on the March 7, 2024, NPRM were due on or before April 8, 2024. EPA received one set of comments, which is discussed in the next section of this rulemaking notice.

## **II. Response to Comment**

EPA received one set of comments on the March 7, 2024, NPRM. This set of comments, submitted by a member of the general public, consists of several statements associated with website hyperlinks. It is unclear how these comments are relevant to the proposal, how the hyperlinked materials support the comments, and how, or whether, the commenter would like EPA to change the proposal. Furthermore, as noted in the March 7, 2024, NPRM, EPA generally will not consider comment contents located outside of the primary submission (i.e., on the web, cloud, or other file-sharing system) such as the hyperlinked materials. For these reasons, the comments require no further response, and we are finalizing the action as proposed.

## **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 this preamble, EPA is finalizing the incorporation by reference of Jefferson County Regulation 1.02, Version 16, *Definitions*, locally effective on March 15, 2023, except for the definition of “Acute noncancer effect.” 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>3</sup>

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

EPA is approving the aforementioned changes to Regulation 1.02, *Definitions*, submitted on May 31, 2023, except for the change to the definition of "Acute noncancer effect," because that definition is not approved into the SIP. EPA has determined that the requested changes in Kentucky's May 31, 2023, SIP revision will not interfere with any applicable requirement concerning attainment, 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. *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);

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<sup>3</sup> *See* 62 FR 27968 (May 22, 1997).

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

Dated: April 30, 2024.

**Jeanne Gettle,**  
*Acting Regional Administrator,*  
*Region 4.*

For the reasons stated in the preamble, 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 1 – General Provisions” revise the entry for 1.02 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 1 – General Provisions					
**	*	*	*	*	*
1.02	Definitions	[Insert date of publication in Federal Register]	[Insert first page of Federal Register citation]	3/15/2023	Except for the definition of “Acute noncancer effect.”
**	*	*	*	*	*

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