



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2023-0339; FRL-12355-02-R4]

Air Plan Approval; KY; Revisions to Jefferson County Control of Open Burning

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 Division for Air Quality (KDAQ) on May 30, 2023. The changes were submitted by KDAQ 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 which clarify that a fire for general agricultural production must be a controlled burn; to allow the use of District-approved accelerants to start certain fires; and to adjust paragraph numbering. EPA is approving the changes 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-2023-0339. 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: 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.

SUPPLEMENTARY INFORMATION:

I. Background

On May 31, 2023,¹ KDAQ, on behalf of the District, 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 1.11, *Control of Open Burning*.

Through a notice of proposed rulemaking (NPRM) published on October 31, 2024 (89 FR 86771), EPA proposed to approve changes to the District's Regulation 1.11, *Control of Open Burning*, which included three changes. The first change was the addition of the phrase "i.e., a controlled burn" to Section 2.1.4 to clarify that "a fire for general agricultural production" must be a controlled burn. The second change was the addition of an exception to Section 2.4 allowing the use of District-approved liquid accelerants to start fires for general agricultural

¹ EPA received the May 30, 2023, submittal on May 31, 2023. For clarity, throughout this document EPA will refer to the May 31, 2023, submission by its cover letter date of May 30, 2023.

² The May 30, 2023, submittal also contains changes to Jefferson County Regulation 1.02, *Definitions*, in the Jefferson County portion of the Kentucky SIP. EPA addressed those changes in a separate rulemaking. See 89 FR 41319 (May 13, 2024).

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 document we refer to the District regulations contained in the Jefferson County portion of the Kentucky SIP as the "Jefferson County" regulations.

production for weed abatement, disease control, or pest prevention or for recognized silvicultural, range, native grassland, or wildlife management practices that have been approved by the District pursuant to Section 2.1.4. The third and final change renumbers the paragraph breaks for subsections 2.1.8 and 2.1.9 and removes subsection 2.1.10. These numbering changes do not affect the language of the rule or otherwise have any substantive impact.

In this rulemaking, EPA is finalizing its approval of the District's May 31, 2023, request to incorporate Version 11 of Regulation 1.11 into the SIP, replacing Version 10, the version of the rule currently in the SIP. EPA's rationale for approving the changes is described in the October 31, 2024, NPRM. Comments on the October 31, 2024, NPRM were due on or before December 2, 2024. No comments were received on the October 31, 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 preamble, EPA is finalizing the incorporation by reference of Jefferson County Regulation 1.11, Version 11, *Control of Open Burning*, District-effective on March 15, 2023, which clarifies that a fire for general agricultural production must be a controlled burn; allows the use of District-approved accelerants to start certain fires; and adjusts paragraph numbering. 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 SIP, 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.⁴

⁴ 62 FR 27968 (May 22, 1997).

III. Final Action

EPA is approving the aforementioned changes to Regulation 1.11, *Control of Open Burning*, submitted to EPA on May 31, 2023. 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.

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
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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, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements EO 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

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. 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. 12898/14096 of achieving EJ for communities with EJ concerns.

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 Clean Air Act, 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: December 19, 2024.

Jeaneanne 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 1 – General Provisions” revise the entry for 1.11 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					
**	*	*	*	*	*
1.11	Control of Open Burning	[Insert date of publication in Federal Register]	[Insert first page of Federal Register citation]	3/15/2023	
**	*	*	*	*	*

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