

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
<b>Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification</b>				
*	*	*	*	*
<b>Subchapter B—New Source Review Permits</b>				
*	*	*	*	*
<b>Division 6—Prevention of Significant Deterioration Review</b>				
Section 116.160 .....	Prevention of Significant Deterioration Requirements.	6/2/2010	9/15/2010	[Insert FR page number where document begins].
*	*	*	*	*

\* \* \* \* \*  
 [FR Doc. 2010–22672 Filed 9–14–10; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R04–OAR–2009–1014–201026; FRL–9201–1]

**Approval and Promulgation of Implementation Plans; Commonwealth of Kentucky; Prevention of Significant Deterioration and Nonattainment New Source Review Rules: Nitrogen Oxide as Precursor to Ozone**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a revision to the Commonwealth of Kentucky’s State Implementation Plan (SIP), submitted to EPA by the Kentucky Energy and Environment Cabinet, through the Kentucky Division for Air Quality (KDAQ), on February 5, 2010. The revision modifies Kentucky’s prevention of significant deterioration (PSD) and nonattainment new source review (NNSR) permitting regulations in Kentucky’s SIP to address permit requirements promulgated in the 1997 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) Implementation Rule—Phase II (hereafter referred to as the “Ozone Implementation NSR Update”). The Ozone Implementation NSR Update revised permit requirements relating to the implementation of the 1997 8-hour

ozone NAAQS, specifically, incorporating nitrogen oxides (NO<sub>x</sub>) as a precursor to ozone. EPA’s approval of Kentucky’s provisions to include NO<sub>x</sub> as an ozone precursor into the Kentucky SIP is based on EPA’s determination that Kentucky’s SIP revision related to these provisions complies with Federal requirements. EPA is also addressing the general adverse comments received on EPA’s proposal to approve NO<sub>x</sub> as an ozone precursor for permitting purposes into the Kentucky SIP.

The February 5, 2010, SIP revision also included provisions to exclude facilities that produce ethanol through a natural fermentation process from the definition of “chemical process plants” in the NSR major source permitting program in the Kentucky SIP. EPA also received adverse comments for its proposal to approve these provisions. At this time, EPA is not taking final action on Kentucky’s provisions to exclude facilities that produce ethanol through a natural fermentation process from the definition of “chemical process plants” in the NSR major source permitting program. EPA will consider the comments received regarding these provisions and take any final action for these provisions in a separate rulemaking.

**DATES:** *Effective Date:* This rule will be effective October 15, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2009–1014. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not 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 <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management 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 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Kentucky SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley can be reached via telephone at (404) 562–9352 and electronic mail at [bradley.twunjala@epa.gov](mailto:bradley.twunjala@epa.gov). For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams can be reached via telephone at (404) 562–9214 and electronic mail at [adams.yolanda@epa.gov](mailto:adams.yolanda@epa.gov). For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the

same address above. Ms. Spann can be reached via telephone at (404) 562-9029 and electronic mail at [spann.jane@epa.gov](mailto:spann.jane@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Background
- II. Today's Action
- III. Comments and Responses
- IV. Final Action
- V. Statutory and Executive Order Reviews

### I. Background

On February 5, 2010, the Commonwealth of Kentucky, through KDAQ, submitted a revision to the Kentucky SIP which relates to Kentucky's Air Quality Regulations, Chapter 51—401 Kentucky Administrative Regulation (KAR) 51:001 "Definitions for 401 KAR Chapter 51," 401 KAR 51:017 "Prevention of Significant Deterioration of Air Quality," and 401 KAR 51:052 "Review of New Sources in or Impacting upon Nonattainment Areas." The SIP revision addressed various issues.<sup>1</sup> This final action addresses only *one* component of the February 5, 2010, submittal—the Ozone Implementation NSR Update requirements, as contained in 40 Code of Federal Regulations (CFR) 51.165 and 51.166, and promulgated on November 29, 2005, as part of EPA's Ozone Implementation NSR Update.

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. As part of the 2004 designations, EPA also promulgated an implementation rule for the 1997 8-hour ozone NAAQS in two phases. Phase I of EPA's 1997 8-hour ozone implementation rule (Phase 1 Rule), published on April 30, 2004, and effective on June 15, 2004, provided the implementation requirements for

<sup>1</sup> Kentucky's February 5, 2010, SIP revision also included provisions for excluding facilities that produce ethanol through a natural fermentation process from the definition of "chemical process plants" in the NSR major source permitting program. In an action published on April 1, 2010 (75 FR 16388), EPA proposed to approve the aforementioned revisions into the Kentucky SIP. At this time, EPA is not taking action on the ethanol provisions. On a separate, unrelated issue, the rule revisions provided in Kentucky's February 5, 2010, submittal also requested the removal of certain provisions for clean units (CU) and pollution control projects (PCP), which were vacated by the United States Court of Appeals for the District of Columbia Circuit. EPA has not previously taken action to approve that portion of Kentucky's submittal (regarding the vacated rules) and EPA is not now taking action on those provisions.

designating areas under subpart 1 and subpart 2 of the CAA. *See* 69 FR 23857.

On November 29, 2005, EPA promulgated the second phase for implementation provisions related to the 1997 8-hour ozone NAAQS—also known as the Phase II Rule. *See* 70 FR 71612. The Phase II Rule addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS which included NSR requirements. Specific to this rulemaking, the Phase II Rule made changes to Federal regulations 40 CFR 51.165 and 51.166, which govern the NNSR and PSD permitting programs. The revisions to the NSR permitting requirements in the Phase II Rule are also known as the Ozone Implementation NSR Update.

Specifically, the Phase II Rule requirements included, among other changes, a new provision stating that NO<sub>x</sub> is an ozone precursor. *See* 70 FR 71612, (page 71679) (November 29, 2005). In the Phase II Rule, EPA stated as follows:

"The EPA has recognized NO<sub>x</sub> as an ozone precursor in several national rules because of its contribution to ozone transport and the ozone nonattainment problem. The EPA's recognition of NO<sub>x</sub> as an ozone precursor is supported by scientific studies, which have long recognized the role of NO<sub>x</sub> in ozone formation and transport. Such formation and transport is not limited to nonattainment areas. Therefore, we believe NO<sub>x</sub> should be treated consistently as an ozone precursor in both our PSD and nonattainment NSR regulations. For these reasons we have promulgated final regulations providing that NO<sub>x</sub> is an ozone precursor \* \* \*

In the Phase II Rule, EPA established that states must submit SIPs incorporating required changes (including the addition of NO<sub>x</sub> as a precursor for ozone) no later than June 15, 2007. *See* 70 FR 71612 (page 71683).

On February 5, 2010, Kentucky submitted a revision to include NO<sub>x</sub> as a precursor for ozone for PSD and NNSR permitting purposes in order to comply with the Phase II Rule.

### II. Today's Action

EPA has determined that Kentucky's February 5, 2010, SIP revision revising Kentucky's PSD and NNSR permit programs is consistent with changes to the Federal NSR requirements (40 CFR 51.165 and 51.166, and the Phase II Rule) relating to the incorporation of NO<sub>x</sub> as an ozone precursor. The revision, which became state-effective on February 5, 2010, is included in Kentucky's PSD and NNSR programs and meets the requirements of the Phase

II Rule by identifying NO<sub>x</sub> as a precursor for ozone.<sup>2</sup>

EPA received comments on its proposal to approve the Kentucky SIP revision to incorporate NO<sub>x</sub> as a precursor for ozone, on April 29, 2010, from the Law Office of Robert Ukeiley on behalf of the Sierra Club and Valley Watch, Incorporated. The comments opposed approval of the SIP revision. EPA's responses to these comments can be found in Section III of this rulemaking.

### III. Comments and Responses

On April 29, 2010, EPA received a letter providing comments on EPA's proposal to approve Kentucky's February 5, 2010, SIP revision to include NO<sub>x</sub> as a precursor for ozone for PSD and NNSR purposes. Below is a summary of the comments and EPA's response.

*Comments:*<sup>3</sup> The comments acknowledged that "[t]his revision is long overdue;" however, the comments further stated that, "EPA should not approve Kentucky's revision just because it is "line-by-line" consistent with the federal rules."

The comments expressed concerns regarding Kentucky's implementation of modeling requirements for ozone, particularly in reference to certain coal-fired utilities in Kentucky (that were specifically identified in the letter), and for those reasons, the Commenter appears to oppose the SIP revision. The Commenter explains that "[t]his proposed rulemaking is EPA's opportunity to provide Kentucky with much-needed direction on how to ensure air quality does not further degrade." One basis for the Commenter's concerns appears to be his position on Kentucky's attainment status for the ozone NAAQS as well as some permitting activities. The Commenter explains his position on Kentucky's alleged noncompliance with ozone requirements particularly with regard to issuing permits for major new sources of air pollution. The concerns seemed focused on ozone related modeling and monitoring. Further, the Commenter explains his concerns regarding ozone preconstruction monitoring at certain stationary sources.

The Commenter concludes by explaining that "[t]he proposed SIP

<sup>2</sup> The Kentucky rules were formatted to conform to Kentucky rule drafting standards (KRS Chapter 13A), but in substantive content the rules are the same as the Federal rules.

<sup>3</sup> A full text of the comments is available in the Docket for this action. Electronic docket information can be found in the "Addresses" portion of this notice. The comments are summarized in this document; however, EPA considered all the comments expressed in the letter.

revision is EPA's opportunity to work with the state of Kentucky to design a program that will help Kentucky achieve present and future attainment with ozone standards." The Commenter requests that EPA (1) not approve the SIP revision until Kentucky agrees to make serious efforts at attaining and assuring continuing attainment with the ozone standards; and (2) use its powers under CAA Section 167 to prevent construction of three major sources of ozone precursor pollution (identified in the letter).

*Response:* EPA's Phase II Rule required states to add NO<sub>x</sub> as a precursor for ozone to their SIPs. EPA explained the basis for that decision in the Phase II Rule, which is part of the CAA program to improve air quality and reduce ground-level ozone. The air quality benefits were the primary basis for EPA's final action in the Phase II Rule requiring states to incorporate NO<sub>x</sub> as a precursor for ozone in their SIPs. See 68 FR 32802 (proposal); 70 FR 71612, 71674, 71679 (final Phase II Rule). The Commenter acknowledges that this action is "overdue" and recognizes that NO<sub>x</sub> is in fact a precursor for ozone. While the comments are adverse in the sense that they request that EPA not approve the SIP revision, the comments provide no scientific or legal basis for EPA to disapprove Kentucky's February 5, 2010, SIP revision. The comments are focused on concerns about Kentucky's major source air program, and include no specific information explaining why adding NO<sub>x</sub> as a precursor to ozone in Kentucky's PSD and NNSR programs is contrary to the CAA or its implementing regulations.

Notably, the Commenter has raised similar concerns in response to other actions (e.g., permit revisions and other SIP revisions), including a lawsuit against EPA seeking EPA to use Clean Air Act Section 167 at certain coal-fired utilities in Kentucky. In a letter dated April 17, 2009 (which was resubmitted on January 20, 2010), the Commenter provided adverse comments to EPA regarding a separate (and unrelated) proposed approval actions for four Kentucky 110(a)(1) maintenance plans, stating

"the Kentucky PSD program only requires that sources conduct ambient monitoring and impact analysis when a source is over 100 tons per year of [volatile organic compounds]. See 401 KAR 51:017 § 7(5)(a). The Kentucky PSD program illegally leaves out major sources of NO<sub>x</sub>. Id."

In that separate action, the Commenter supported disapproval based on NO<sub>x</sub> not being listed as an ozone precursor in the Kentucky SIP.

Nonetheless, in this action to incorporate NO<sub>x</sub> as a precursor for ozone, the same Commenter is opposing the action. Commenter appears to be trying to achieve changes not directly related to the SIP revision at issue, but more specifically focused on certain major stationary sources identified in the letter. These other actions have their own independent regulatory processes wherein Commenter has other opportunities to raise concerns and seek changes.

EPA's action to approve NO<sub>x</sub> as a precursor for ozone in Kentucky supports the improvement of air quality in Kentucky, in part because of the associated modeling and monitoring requirements. EPA's approval of this SIP revision ensures that Kentucky's PSD and NNSR permit programs are consistent with the Federal NSR permit requirements (40 CFR 51.165 and 51.166) relating to the incorporation of NO<sub>x</sub> as an ozone precursor set forth in the Phase II Rule.

#### IV. Final Action

Pursuant to Section 110 of the CAA, EPA is taking final action to approve Kentucky's SIP revision submitted February 5, 2010, which incorporates NO<sub>x</sub> as an ozone precursor for PSD and NNSR purposes into the Kentucky SIP. The revision included in Kentucky's PSD and NNSR programs is equivalent to the provision in the Ozone Implementation NSR Update. EPA is approving these revisions into the Kentucky SIP because they are consistent with the CAA and its implementing regulations.

#### 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 Act 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- 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; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. 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 November 15, 2010. 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, Incorporation by

reference, Ozone, Volatile organic compounds.

Dated: September 1, 2010.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart S—Kentucky**

■ 2. Section 52.920(c) Table 1 is amended by revising the entries for “401 KAR 51:001,” “401 KAR 51:017,” and “401 KAR 51:052” to read as follows:

**§ 52.920 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**TABLE 1—EPA-APPROVED KENTUCKY APPROVED KENTUCKY REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *				
<b>Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards</b>				
401 KAR 51:001 .....	Definitions for 401 KAR Chapter 51.	2/5/2010	9/15/2010 [Insert citation of publication].	Except the phrase “except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,” in 401 KAR 51:001 Section 1 (118)(1)(b)(i) and the phrase “except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140,” in 401 KAR 51:001 Section 1(118) (2)(c)(20).
* * * * *				
401 KAR 51:017 .....	Prevention of significant deterioration of air quality.	2/5/2010	9/15/2010 [Insert citation of publication].	Except the phrase “except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140;” in 401 KAR 51:017 Section 7(1)(c)20.
401 KAR 51:052 .....	Review of new sources in or impacting upon non-attainment areas.	2/5/2010	9/15/2010 [Insert citation of publication].	Except the phrase “except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,” in 401 KAR 51:052 Section 2 (3)(t).
* * * * *				

\* \* \* \* \*  
 [FR Doc. 2010–22856 Filed 9–14–10; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA–HQ–OPP–2006–0121; FRL–8839–3]

**Ammonium Formate; Exemption from the Requirement of a Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of ammonium formate (CAS Reg. No. 540–69–2) when used as an inert ingredient (complexing or fixing agent with copper compounds) in pesticide formulations for certain pre-harvest uses. Phyton Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ammonium formate.

**DATES:** This regulation is effective September 15, 2010. Objections and requests for hearings must be received on or before November 15, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0121. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information