

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).

C. Petitions for Judicial Review

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 December 11, 2012. 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, in which EPA determines that the Pittsburgh Area has attained the 1997 annual PM_{2.5} NAAQS and attained the 1997 annual PM_{2.5} NAAQS by its attainment date, 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, Particulate matter, Reporting and recordkeeping requirements.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended 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 NN—Pennsylvania

■ 2. Section 52.2056 is amended by adding paragraph (h) to read as follows:

§ 52.2056 Determinations of Attainment.

(h) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Pittsburgh-Beaver Valley fine particle (PM_{2.5}) nonattainment area attained the 1997 annual PM_{2.5} National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the area's air quality as of the attainment date,

whether the area attained the standard. EPA also determined that the Pittsburgh-Beaver Valley PM_{2.5} nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

■ 3. Section 52.2059 is amended by adding paragraph (g) to read as follows:

§ 52.2059 Control strategy: Particulate matter.

* * * * *

(g) *Determination of Attainment.* EPA has determined, as of October 12, 2012, that based on 2008 to 2010 and 2009 to 2011 ambient air quality data, the Pittsburgh-Beaver Valley fine particle (PM_{2.5}) nonattainment area has attained the 1997 annual PM_{2.5} national ambient air quality standards (NAAQS). This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for the Pittsburgh-Beaver Valley PM_{2.5} nonattainment area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual PM_{2.5} NAAQS.

[FR Doc. 2012-24782 Filed 10-11-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2011-0227; FRL-9734-7]

Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to the Jefferson County Portion of the Kentucky SIP; New Source Review; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve multiple 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), to EPA in two submittals dated June 1, 2009, and February 8, 2011. These revisions were submitted by KDAQ on behalf of the Louisville Metro Air Pollution Control District (LMAPCD) (also referred to as Jefferson County) and modify the LMAPCD New Source Review (NSR) Prevention of Significant Deterioration (PSD) permitting

regulations. EPA is approving Jefferson County's June 1, 2009, and February 8, 2011, SIP revisions because the Agency has determined that these SIP revisions are consistent with the Clean Air Act (CAA or Act) and EPA regulations regarding the PSD permitting program.

DATES: This rule is effective November 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2011-0227. All documents in the docket are listed on the 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 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 Jefferson County portion of 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's telephone number is (404) 562-9352; email address: bradley.twunjala@epa.gov. For information regarding the GHG Tailoring Rule, 2002 NSR Reform and NSR PM_{2.5} Rule, contact Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562-9214; email address: adams.yolanda@epa.gov. For information regarding the Phase II Rule and ozone NAAQS, contact Jane Spann, Regulatory Development Section, at the same address above. Ms. Spann's telephone number is (404) 562-9029; email address: spann.jane@epa.gov. For information regarding the PM_{2.5} NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the

same address above. Mr. Huey's telephone number is (404) 562-9104; email address: huey.joel@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. EPA's Action on Jefferson County's SIP Revision to Adopt the GHG Tailoring Rule
- III. EPA's Action on Jefferson County's SIP Revision to Adopt the NSR PM_{2.5} PSD Permitting Requirements
- IV. EPA's Action on Jefferson County's SIP Revisions to Adopt the Phase II Rule
- V. EPA's Action on Jefferson County's SIP Revision to Adopt the Federal NSR Reform and Reasonable Possibility Provisions
- VI. EPA's Action on Jefferson County's Automatic Rescission Clause
- VII. Final Action
- VIII. Statutory and Executive Order Reviews

I. Background

On June 1, 2009, and February 8, 2011, the Commonwealth of Kentucky through KDAQ (and on behalf of LMAPCD) submitted two SIP revisions to EPA for approval into the Jefferson County portion of the Kentucky SIP to adopt federal NSR PSD permitting requirements. The SIP revisions consist of changes to the LMAPCD Air Quality Regulations, Regulation 2 Permit Requirements: Regulation 2.05—Prevention of Significant Deterioration of Air Quality, and incorporate by reference (IBR)¹ several NSR PSD permitting requirements promulgated at 40 CFR 52.21. Specifically, the June 1, 2009, SIP revision: (1) Incorporates provisions for implementing the PSD program for the PM_{2.5} NAAQS as promulgated in the NSR PM_{2.5} Rule,² 73 FR 28321 (May 16, 2008); (2) adopts PSD provisions related to the implementation of the 1997 8-hour ozone Phase II Rule (Phase II Rule), including nitrogen oxides (NO_x) as a precursor to ozone, 70 FR 71612 (November 29, 2005); and (3) adopts federal PSD regulations established in the 2002 NSR Reform Rules, 67 FR 80186 (December 31, 2002), and the NSR Reasonable Possibility Rule, 72 FR 72607 (December 21, 2007). These PSD permitting provisions became effective in Jefferson County on May 20, 2009. The February 8, 2011, SIP revision provides Jefferson County with the

¹ Throughout this document IBR means incorporate or incorporates by reference.

² With respect to the NSR PM_{2.5} Rule, Phase II Rule and NSR Reform, Jefferson County's SIP revisions only address PSD requirements at Regulation 2.05. The nonattainment NSR provisions for Jefferson County (Regulation 2.04) for these provisions are still under development by LMAPCD.

authority to regulate greenhouse gas (GHG) emissions under its PSD program and establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to LMAPCD's PSD permitting requirements for their GHG emissions as promulgated in the GHG Tailoring Rule, 75 FR 31514 (June 3, 2010). These GHG PSD applicability provisions became effective in Jefferson County on November 17, 2010. In addition, the February 8, 2011, submittal adopts a provision that would automatically render Jefferson County's Regulation 2.05 or a portion thereof invalid in the wake of certain court decisions or other events (the "automatic rescission clause"). Approval of Jefferson County's GHG permitting regulations also includes a proposal to simultaneously rescind the federal implementation plan (FIP) that EPA promulgated on January 14, 2011. See 76 FR 2581.

On June 6, 2012, EPA published a proposed rulemaking to approve the aforementioned changes to Jefferson County's NSR PSD program. See 77 FR 33363. Comments on the proposed rulemaking were due on or before July 6, 2012. No comments, adverse or otherwise, were received on EPA's June 6, 2012, proposed rulemaking. Pursuant to section 110 of the CAA, EPA is now taking final action to approve the changes to Jefferson County's NSR PSD program as provided in EPA's June 6, 2012, proposed rulemaking. A summary of the background for today's final action is provided below. EPA's June 6, 2012, proposed rulemaking contains more detailed information regarding the Jefferson County SIP revisions being approved today. Please refer to the relevant sections in the proposed rulemaking for EPA's rationale for this final action. See 77 FR 33363.

In addition to incorporating the changes discussed above, Jefferson County's proposed SIP revisions include PSD permitting provisions that: (1) Exclude facilities that produce ethanol through a natural fermentation process from the definition of "chemical process plants" in the major NSR source permitting program as amended in the Ethanol Rule, 72 FR 24060 (May 1, 2007); and (2) IBR changes pursuant to EPA's Fugitive Emissions Rule, 73 FR 77882 (December 19, 2008).³ In today's

³ On March 31, 2010, EPA stayed the Fugitive Emissions Rule (73 FR 77882) for 18 months to October 3, 2011, to allow the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations. This stay was established as a result of EPA granting the Natural Resource Defense Council's petition for

rulemaking, EPA is not taking action on LMAPCD's changes to its PSD regulations to adopt provisions promulgated in the Ethanol Rule nor is EPA taking action on LMAPCD's changes to incorporate the provisions of the Fugitive Emissions Rule.

Jefferson County's practice for revising its PSD regulations is to IBR into its SIP the version of the Code of Federal Regulations (at 40 CFR 52.21) that is in effect as of a specified date. LMAPCD's Regulation 2.05 contains the preconstruction review program that provides for the prevention of significant deterioration of ambient air quality as required under part C of title I of the CAA (the PSD program). Jefferson County's June 1, 2009, SIP revision, which provided version 9 of LMAPCD's Regulation 2.05, IBR the federal PSD regulations as set forth at 40 CFR 52.21, and as amended as of July 1, 2008. Subsequently, the February 8, 2011, SIP revision, which provided version 10 of LMAPCD's Regulation 2.05, IBR federal PSD regulations as set forth at 40 CFR 52.21, and as amended as of July 1, 2010, thereby superseding version 9 of Regulation 2.05. Throughout this rulemaking, EPA will refer to the June 1, 2009, and February 8, 2011, SIP revisions as "Jefferson County's SIP revisions." In effect, the Jefferson County SIP revisions change the LMAPCD's IBR date for Regulation 2.05 to July 1, 2010.

II. EPA's Action on Jefferson County's SIP Revision To Adopt the GHG Tailoring Rule

As mentioned above, on February 8, 2011, KDAQ, on behalf of LMAPCD, submitted to EPA a revision to the Jefferson County portion of Kentucky's SIP to IBR NSR PSD requirements for GHG. Specifically, the February 8, 2011, SIP revision includes changes to LMAPCD's Regulation 2.05—Prevention of Significant Deterioration of Air Quality (version 10) to provide authority to LMAPCD to regulate GHG under the PSD program, and establishes appropriate PSD applicability thresholds for GHGs, consistent with EPA's Tailoring Rule.

reconsideration on the original Fugitive Emissions Rule. See 73 FR 77882 (December 19, 2008). On March 30, 2011 (76 FR 17548), EPA proposed an interim rule which superseded the March 31, 2010, stay and clarified and extended the stay of the Fugitive Emission Rule until EPA completes its reconsideration. The interim rule simply reverts the CFR text back to the language that existed prior to the Fugitive Emissions Rule changes in the December 19, 2008, rulemaking. EPA plans to issue a final rule affirming the interim rule as final. The final rule will remain in effect until EPA completes its reconsideration.

LMAPCD is currently the SIP-approved permitting authority for the PSD program in Jefferson County, Kentucky, and does not interpret its current SIP-approved PSD regulations at Regulation 2.05 (i.e., version 9), which IBR the federal PSD regulations, to be applicable to GHG. In letters dated October 4, 2010, and October 19, 2010, LMAPCD notified EPA that it did not have the authority to regulate GHG under the PSD program, and thus was in the process of revising its regulations (the subject of this final action) to provide LMAPCD with this authority. The February 8, 2011, SIP revision IBR the federal PSD regulations at 40 CFR 52.21 as of July 2010 into Jefferson County Regulation 2.05 to include the relevant federal GHG Tailoring Rule changes that provide LMAPCD with the authority to regulate GHG under the PSD program and establish the thresholds for GHG permitting applicability. The GHG Tailoring Rule changes that this final action incorporates into the Jefferson County portion of Kentucky's SIP define the term "subject to regulation" for the PSD program and define "greenhouse gases" and "tons per year (tpy) carbon dioxide equivalent emissions" (CO₂e). Additionally, the changes specify the methodology for calculating an emissions increase for GHG, the applicable thresholds for GHG emissions subject to PSD, and the schedule for when the applicability thresholds take effect. See 75 FR at 31606–31607. EPA has determined that these provisions, which provide LMAPCD with the authority to regulate GHG under the PSD program and establish the thresholds for GHG permitting applicability, are consistent with EPA's PSD regulations for GHG emitting sources as promulgated in the GHG Tailoring Rule and section 110 of the CAA. Therefore, EPA is approving the GHG PSD permitting revision into the Jefferson County portion of Kentucky's SIP. In addition, EPA is rescinding the FIP promulgated January 14, 2011, codified in 40 CFR 52.37(b)(7), that ensures the availability of a PSD-permitting authority for GHG-emitting sources in Jefferson County, Kentucky. This FIP is no longer necessary since the GHG PSD permitting revision is being approved into the Jefferson County portion of Kentucky's SIP. Therefore, this final action removes Jefferson County from the list at 40 CFR section 52.37.

III. EPA's Action on Jefferson County's SIP Revision To Adopt the NSR PM_{2.5} PSD Permitting Requirements

Jefferson County's Regulation 2.05—*Prevention of Significant Deterioration of Air Quality* IBR the provisions at 40 CFR 52.21, as amended in the NSR PM_{2.5} Rule for PSD. Specifically, Jefferson County's June 1, 2009, and February 8, 2011, SIP revisions IBR the following NSR PM_{2.5} provisions for PSD: (1) Requirement for NSR permits to address directly emitted PM_{2.5} and precursor pollutants; (2) significant emission rates for direct PM_{2.5} and precursor pollutants (SO₂ and NO_x); (3) PSD and NNSR requirement of states to address condensable PM in establishing enforceable emission limits for PM₁₀ or PM_{2.5}; and (4) PM_{2.5} emission offsets regarding the PM₁₀ "grandfathering" provision. In the February 8, 2011, SIP revision, LMAPCD elected to IBR the grandfathering provision at 40 CFR 52.21(i)(1)(xi) in its PSD regulations at Regulation 2.05. EPA took final action to repeal the PM₁₀ grandfathering provision on May 18, 2011. See 76 FR 28646. Therefore, EPA is not taking action to approve this provision into the Jefferson County portion of the Kentucky SIP. Jefferson County will need to update its PSD provisions to reflect the repeal of the PM₁₀ grandfathering provision in federal regulations at 40 CFR 52.21. At this time Jefferson County's PSD regulations are approvable because they are at least as stringent as the current federal regulations and are consistent with section 110 of the CAA.

Jefferson County's February 11, 2011, SIP revision also IBR, into the Jefferson County portion of the Kentucky SIP, PSD regulations regarding the requirement to address condensable PM in applicability determinations and in establishing enforceable emission limits in PSD and nonattainment NSR permits, as established in the NSR PM_{2.5} Rule. As discussed above in Section III.B, under a separate action, EPA has proposed to correct the inadvertent inclusion of "particulate matter emissions" in the definition of "regulated NSR pollutant" as an indicator for which condensable emissions must be addressed. See 77 FR 75656 (March 16, 2012). Further, on May 14, 2012, the Commonwealth of Kentucky, on behalf of LMAPCD, provided a letter to EPA with clarification of Jefferson County's intent in light of EPA's March 12, 2012, proposed rulemaking. Specifically, in the letter Kentucky requested that EPA not approve (into the Jefferson County portion of the SIP) the term "particulate matter emissions" (at Regulation 2.05)

as part of the definition for "regulated NSR pollutant" that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for PM. Therefore, given the Commonwealth's and LMAPCD's request and EPA's intention to amend the definition of "regulated NSR pollutant," EPA is not taking action to approve the terminology "particulate matter emissions" into the Jefferson County portion of the Kentucky SIP (at Regulation 2.05) for the condensable provision at the definition of "regulated NSR pollutant." EPA is, however, approving into the SIP at Regulation 2.05 the remaining condensable requirement at 40 CFR 51.166(b)(49)(vi) that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀. EPA has determined that Jefferson County's June 1, 2009, and February 8, 2011, SIP revisions are consistent with the NSR PM_{2.5} Rule for PSD and with section 110 of the CAA. See NSR PM_{2.5} Rule, 75 FR 31514.

IV. EPA's Analysis of Jefferson County's SIP Revisions To Adopt the Phase II Rule

Jefferson County's June 1, 2009, SIP revision updated LMAPCD's PSD program to include NO_x as an ozone precursor for PSD permitting, consistent with changes to the federal regulations set forth in the Phase II Rule at 40 CFR 52.21. Subsequently, on February 8, 2011, KDAQ submitted a SIP revision which included the June 1, 2009, changes in addition to other federal PSD permitting updates to the Jefferson County portion of the Kentucky SIP. Jefferson County's SIP revisions IBR the federal PSD regulations (at 40 CFR 52.21) to include the NO_x as a precursor PSD-only permitting provisions promulgated in the Phase II Rule into the Jefferson County portion of the Kentucky SIP at Regulation 2.05—*Prevention of Significant Deterioration of Air Quality* (version 10) as of July 1, 2010. EPA has determined that Jefferson County's SIP revisions are consistent with the PSD Phase II Rule permitting requirements and section 110 of the CAA.

V. EPA's Action on Jefferson County's SIP Revision To Adopt the Federal NSR Reform and Reasonable Possibility Provisions

As mentioned in Section I, LMAPCD's PSD Program at Regulation 2.05—*Prevention of Significant Deterioration for Air Quality* establishes the preconstruction review program as

required under part C of title I of the CAA. The changes to LMAPCD's PSD rules, which EPA is now approving into the Jefferson County portion of the Kentucky SIP, were established to update the existing PSD Program to meet the requirements of the 2002 NSR Reform Rules. Jefferson County's SIP revisions IBR the 2002 NSR Reform PSD changes regarding baseline actual emissions, actual-to-projected-actual applicability tests, and plantwide applicability limit provisions. Jefferson County's June 1, 2009, and February 8, 2011, SIP revisions both address the federal PSD requirements promulgated in the 2002 NSR Reform Rules. The proposed revisions explicitly exclude the pollution control projects and clean unit portions of the 2002 NSR Reform Rules that were vacated by the D.C. Circuit Court. *See New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005).

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping and EPA's December 21, 2007, clarification of the term "reasonable possibility" (72 FR 72607), Jefferson County's SIP revisions IBR the federal revised "reasonable possibility" provisions at 40 CFR 52.21(r)(6). Thus, LMAPCD's recordkeeping and reporting provisions are the same as the federal requirements promulgated in EPA's December 21, 2007, final action.

In addition to incorporating the federal PSD regulations, Jefferson County's February 8, 2011, SIP revision includes a technical support document (TSD), which assesses the impact of adopting the 2002 NSR Reform provisions into Jefferson County's PSD permitting program and the air quality impacts. As mentioned above, LMAPCD has a SIP-approved PSD program. However, due to the limited number of sources in Jefferson County, the permitting program does not assess many major PSD permits. In fact, in nearly ten years, LMAPCD has only analyzed two projects under PSD. Most sources in Jefferson County are permitted through LMAPCD's minor source program, which allows sources to take emission limits to avoid PSD permitting. Additionally, regarding criteria pollutants, the TSD explains that sources typically subject to PSD permitting (i.e., point sources) have not been the primary driver for past or current nonattainment NAAQS designations in Jefferson County. *See* the TSD in the Docket ID No. EPA-R04-OAR-2011-0227.

LMAPCD's TSD concluded that adoption of the 2002 NSR Reform improvements would not impede the LMAPCD's ability to comply with the NAAQS or any reasonable progress

towards continued maintenance. After evaluating Jefferson County's SIP revision and the TSD provided with the February 8, 2011, SIP revision, EPA has determined that the SIP revisions to adopt NSR Reform and reasonable possibility provisions are consistent with the requirements for the preparation, adoption and submittal of implementation plans for the federal PSD program at 40 CFR 52.21 and the 2002 NSR Reform Rule.

VI. EPA's Action for Jefferson County's Automatic Rescission Clause

Jefferson County's February 8, 2011, SIP revision adds a new section to Regulation 2.05, Section 2 "Effect of Stay, Vacatur, or Withdrawal," also known as an automatic rescission clause. This clause provides that in the event that EPA or a federal court stays, vacates, or withdraws any section or subsection of 40 CFR 52.21, that section or subsection shall automatically be deemed stayed, vacated or withdrawn from Jefferson County's SIP-approved PSD program at Regulation 2.05. The period of delay resulting from a stay would begin and end for purposes of Jefferson County's SIP on the date specified by EPA in a **Federal Register** notice announcing the stay. Likewise, any provision that is vacated or withdrawn shall be null and void for purposes of Jefferson County's SIP as of the date specified in the notice of vacatur or withdrawal published by EPA in a **Federal Register** notice.

EPA has determined that Jefferson County's automatic rescission clause is approvable. In assessing the approvability of this provision, EPA considered two key factors: (1) Whether the public will be given reasonable notice of any change to the SIP that occurs as a result of the automatic rescission clause, and (2) whether any future change to the SIP that occurs as a result of the automatic rescission clause would be consistent with EPA's interpretation of the effect of the triggering EPA or federal court action (e.g., the extent of an administrative or judicial stay). These criteria are derived from the SIP revision procedures set forth in the CAA and federal regulations.

Regarding public notice, CAA section 110(l) provides that any revision to a SIP submitted by a state to EPA for approval "shall be adopted by such State after reasonable notice and public hearing." In accordance with CAA section 110(l), the LMAPCD followed applicable notice-and-comment procedures prior to adopting the automatic rescission clause. Thus, the public is on notice that the Jefferson

County portion of the Kentucky SIP will automatically update to reflect any EPA or federal action that stays, withdraws, or vacates any portion of 40 CFR 52.21. In addition, the automatic rescission clause provides that no change to the SIP will occur until EPA publishes a **Federal Register** notice announcing that a portion of 40 CFR 52.21 has been stayed, vacated, or withdrawn. Thus, the timing and extent of any future SIP change resulting from the automatic rescission clause will be clear to both the regulated community and the general public.

EPA's consideration of whether any SIP change resulting from the proposed automatic rescission clause would be consistent with EPA's interpretation of the effect of the triggering action on federal regulations is based on 40 CFR 51.105. Under 40 CFR 51.105, "[r]evisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part." *See* 40 CFR 51.105. While EPA is approving the automatic updating of the Jefferson County portion of the Kentucky SIP to reflect the stay, withdrawal or vacatur of any section or subsection of 40 CFR 52.21, there could be varying interpretations of the timing and extent of changes to 40 CFR 52.21 resulting from a given EPA or federal court action. By tying the automatic updating of the SIP to EPA's publication of a **Federal Register** notice announcing the change to 40 CFR 52.21, the automatic rescission clause ensures that any change to the SIP will be consistent with EPA's interpretation of the triggering action.

VII. Final Action

Pursuant to section 110 of the CAA, EPA is taking final action to approve Jefferson County's June 1, 2009, and February 8, 2011, SIP revisions which IBR (into the Jefferson County portion of the Kentucky SIP) federal requirements for NSR PSD permitting. Jefferson County's SIP revisions consist of changes to the LMAPCD Air Quality Regulation 2.05—*Prevention of Significant Deterioration of Air Quality* and address several NSR PSD permitting requirements promulgated at 40 CFR 52.21. Specifically, Jefferson County's June 1, 2009, SIP revision adopts federal regulations relating to PSD requirements for the NSR PM_{2.5} Rule, the Phase II Rule, the 2002 NSR Reform Rule, and the NSR Reasonable Possibility Rule into the Jefferson County portion of the Kentucky SIP. Jefferson County's February 8, 2011, SIP revision includes all of the aforementioned updates to

LMAPCD's PSD regulations but also provides Jefferson County with the authority to regulate GHG emissions under its PSD program, establishes appropriate emissions thresholds for determining PSD applicability with respect to new and modified GHG-emitting sources (in accordance with EPA's Tailoring Rule), and incorporates an automatic rescission clause for 40 CFR 52.21 regulations. EPA has determined that these SIP revisions are approvable because they are consistent with the CAA and EPA regulations regarding PSD permitting. In addition, EPA is rescinding the FIP promulgated on January 14, 2011, at 40 CFR 52.37(b)(7); therefore, this final rule removes Jefferson County from the PSD GHG FIP listing at 40 CFR section 52.37.

VIII. 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 Commonwealth 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 December 11, 2012. 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, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Particulate matter, Nitrogen Oxides, Reporting and recordkeeping requirements and Volatile organic compounds.

Dated: September 12, 2012.

A. Stanley Meiburg,

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 A—General Provisions

§ 52.37 [Amended]

- 2. Section 52.37 is amended by removing and reserving paragraph (b)(7).

Subpart S—Kentucky

- 3. Section 52.920(c) Table 2 is revised to read as follows:

§ 52.920 Identification of plan.

* * * * *
(c) * * *

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

| Reg | Title/subject | EPA approval date | Federal Register notice | District effective date | Explanation |
|---------------------------------|--|-------------------|-------------------------|-------------------------|-------------|
| Reg 1—General Provisions | | | | | |
| 1.01 | General Application of Regulations and Standards. | 10/23/01 | 66 FR 53660 | 03/17/99 | |
| 1.02 | Definitions | 11/19/02 | 67 FR 69688 | 12/19/01 | |
| 1.03 | Abbreviations and Acronyms | 11/19/02 | 67 FR 69688 | 05/15/02 | |
| 1.04 | Performance Tests | 10/23/01 | 66 FR 53660 | 11/19/97 | |
| 1.05 | Compliance with Emission Standards and Maintenance Requirements. | 10/23/01 | 66 FR 53660 | 11/18/92 | |

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

| Reg | Title/subject | EPA approval date | Federal Register notice | District effective date | Explanation |
|--|---|-------------------|----------------------------------|-------------------------|--|
| 1.06 | Source Self-Monitoring and Reporting. | 10/23/01 | 66 FR 53660 | 12/15/93 | |
| 1.07 | Emissions During Startups, Shutdowns, Malfunctions and Emergencies. | 10/23/01 | 66 FR 53660 | 01/17/96 | |
| 1.08 | Administrative Procedures | 11/03/03 | 68 FR 62236 | 06/19/02 | |
| 1.09 | Prohibition of Air Pollution | 10/23/01 | 66 FR 53660 | 11/16/83 | |
| 1.10 | Circumvention | 10/23/01 | 66 FR 53660 | 04/19/72 | |
| 1.11 | Control of Open Burning | 10/23/01 | 66 FR 53660 | 02/22/90 | |
| 1.14 | Control of Fugitive Particulate Emissions. | 10/23/01 | 66 FR 53660 | 01/20/88 | |
| 1.18 | Rule Effectiveness | 10/23/01 | 66 FR 53689 | 09/21/94 | |
| 1.19 | Administrative Hearings | 11/19/02 | 67 FR 69688 | 05/15/02 | |
| Reg 2—Permit Requirements | | | | | |
| 2.01 | General Application | 10/23/01 | 66 FR 53660 | 04/21/82 | |
| 2.02 | Air Pollution Regulation Requirements and Exemptions. | 10/23/01 | 66 FR 53660 | 06/21/95 | |
| 2.03 | Permit Requirements—Non-Title V Construction and Operating Permits and Demolition/Renovation Permits. | 10/23/01 | 66 FR 53660 | 12/15/93 | |
| 2.04 | Construction or Modification of Major Sources in or Impacting Upon Non-Attainment Areas (Emission Offset Requirements). | 10/23/01 | 66 FR 53660 | 03/17/93 | |
| 2.05 | Prevention of Significant Deterioration of Air Quality. | 10/12/12 | [Insert citation of publication] | 11/17/10 | This approval does not include Jefferson County's revisions to incorporate by reference the Ethanol Rule (72 FR 24060, May 1, 2007), Fugitives Emissions Rule (73 FR 77882, December 19, 2008), the PM ₁₀ Grandfathering Provision and the term "particulate matter emissions" (at 40 CFR 52.21(i)(1)(xi) and 51.166(b)(49)(vi) respectively in the NSR PM _{2.5} Rule (73 FR 28321, May 16, 2008). |
| 2.06 | Permit Requirements—Other Sources. | 10/23/01 | 66 FR 53660 | 11/16/83 | |
| 2.07 | Public Notification for Title V, PSD, and Offset Permits; SIP Revisions; and Use of Emission Reduction Credits. | 10/23/01 | 66 FR 53660 | 06/21/95 | |
| 2.09 | Causes for Permit Suspension | 11/03/03 | 68 FR 62236 | 06/19/02 | |
| 2.10 | Stack Height Considerations | 10/23/01 | 66 FR 53660 | 07/19/89 | |
| 2.11 | Air Quality Model Usage | 10/23/01 | 66 FR 53660 | 05/19/99 | |
| 2.17 | Federally Enforceable District Origin Operating Permits. | 11/03/03 | 68 FR 62236 | 06/19/02 | |
| Reg 3—Ambient Air Quality Standards | | | | | |
| 3.01 | Purpose of Standards and Expression of Non-Degradation Intention. | 10/23/01 | 66 FR 53660 | 06/13/79 | |
| 3.02 | Applicability of Ambient Air Quality Standards. | 10/23/01 | 66 FR 53660 | 06/13/79 | |
| 3.03 | Definitions | 10/23/01 | 66 FR 53660 | 06/13/79 | |
| 3.04 | Ambient Air Quality Standards | 10/23/01 | 66 FR 53660 | 04/20/88 | |
| 3.05 | Methods of Measurement | 10/23/01 | 66 FR 53660 | 04/20/88 | |
| Reg 4—Emergency Episodes | | | | | |
| 4.01 | General Provisions for Emergency Episodes. | 10/23/01 | 66 FR 53660 | 06/13/79 | |
| 4.02 | Episode Criteria | 10/23/01 | 66 FR 53660 | 04/20/88 | |
| 4.03 | General Abatement Requirements | 10/23/01 | 66 FR 53660 | 02/16/83 | |
| 4.04 | Particulate and Sulfur Dioxide Reduction Requirements. | 10/23/01 | 66 FR 53660 | 04/19/72 | |

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

| Reg | Title/subject | EPA approval date | Federal Register notice | District effective date | Explanation |
|--|---|-------------------|-------------------------|-------------------------|-------------|
| 4.05 | Hydrocarbon and Nitrogen Oxides Reduction Requirements. | 10/23/01 | 66 FR 53660 | 02/16/83 | |
| 4.06 | Carbon Monoxide Reduction Requirements. | 10/23/01 | 66 FR 53660 | 02/16/83 | |
| 4.07 | Episode Reporting Requirements | 10/23/01 | 66 FR 53660 | 06/13/79 | |
| Reg 6—Standards of Performance for Existing Affected Facilities | | | | | |
| 6.01 | General Provisions | 10/23/01 | 66 FR 53660 | 11/16/83 | |
| 6.02 | Emission Monitoring for Existing Sources. | 10/23/01 | 66 FR 53660 | 11/16/83 | |
| 6.07 | Standards of Performance for Existing Indirect Heat Exchangers. | 10/23/01 | 66 FR 53660 | 06/13/79 | |
| 6.08 | Standard of Performance for Existing Incinerators. | 10/23/01 | 66 FR 53660 | 06/13/79 | |
| 6.09 | Standards of Performance for Existing Process Operations. | 10/23/01 | 66 FR 53660 | 03/17/99 | |
| 6.10 | Standard of Performance for Existing Process Gas Streams. | 10/23/01 | 66 FR 53660 | 11/16/83 | |
| 6.12 | Standard of Performance for Existing Asphalt Paving Operations. | 10/23/01 | 66 FR 53661 | 05/15/91 | |
| 6.13 | Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds. | 10/23/01 | 66 FR 53661 | 05/15/91 | |
| 6.14 | Standard of Performance for Selected Existing Petroleum Refining Processes and Equipment. | 10/23/01 | 66 FR 53661 | 04/21/82 | |
| 6.15 | Standard of Performance for Gasoline Transfer to Existing Service Station Storage Tanks (Stage I Vapor Recovery). | 01/25/80 | 45 FR 6092 | 06/13/79 | |
| 6.16 | Standard of Performance for Existing Large Appliance Surface Coating Operations. | 10/23/01 | 66 FR 53661 | 05/15/91 | |
| 6.17 | Standard of Performance for Existing Automobile and Truck Surface Coating Operations. | 10/23/01 | 66 FR 53661 | 11/18/92 | |
| 6.18 | Standards of Performance for Existing Solvent Metal Cleaning Equipment. | 11/19/02 | 67 FR 69688 | 05/15/02 | |
| 6.19 | Standard of Performance for Existing Metal Furniture Surface Coating Operations. | 10/23/01 | 66 FR 53661 | 05/15/91 | |
| 6.20 | Standard of Performance for Existing Bulk Gasoline Plants. | 10/23/01 | 66 FR 53661 | 11/16/83 | |
| 6.21 | Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals. | 10/23/01 | 66 FR 53661 | 11/16/83 | |
| 6.22 | Standard of Performance for Existing Volatile Organic Materials Loading Facilities. | 10/23/01 | 66 FR 53661 | 03/17/93 | |
| 6.24 | Standard of Performance for Existing Sources Using Organic Materials. | 10/23/01 | 66 FR 53661 | 03/17/93 | |
| 6.26 | Standards of Performance for Existing Volatile Organic Compound Water Separators. | 10/23/01 | 66 FR 53661 | 06/13/79 | |
| 6.27 | Standards of Performance for Existing Liquid Waste Incinerators. | 10/23/01 | 66 FR 53661 | 06/13/79 | |
| 6.28 | Standard of Performance for Existing Hot Air Aluminum Atomization Processes. | 10/23/01 | 66 FR 53661 | 03/18/81 | |
| 6.29 | Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography. | 10/23/01 | 66 FR 53661 | 05/15/91 | |
| 6.30 | Standard of Performance for Existing Factory Surface Coating Operations of Flat Wood Paneling. | 10/23/01 | 66 FR 53661 | 05/15/91 | |

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

| Reg | Title/subject | EPA approval date | Federal Register notice | District effective date | Explanation |
|------------|--|-------------------|-------------------------|-------------------------|-------------|
| 6.31 | Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface-Coating Operations. | 10/23/01 | 66 FR 53661 | 04/23/96 | |
| 6.32 | Standard of Performance for Leaks from Existing Petroleum Refinery Equipment. | 10/23/01 | 66 FR 53661 | 05/15/91 | |
| 6.33 | Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations. | 10/23/01 | 66 FR 53661 | 05/15/91 | |
| 6.34 | Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants. | 10/23/01 | 66 FR 53661 | 05/15/91 | |
| 6.35 | Standard of Performance for Existing Fabric, Vinyl and Paper Surface Coating Operations. | 10/23/01 | 66 FR 53661 | 05/15/91 | |
| 6.38 | Standard of Performance for Existing Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industries. | 10/23/01 | 66 FR 53661 | 12/17/86 | |
| 6.39 | Standard of Performance for Equipment Leaks of Volatile Organic Compounds in Existing Synthetic Organic Chemical and Polymer Manufacturing Plants. | 10/23/01 | 66 FR 53661 | 07/17/96 | |
| 6.40 | Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control). | 10/23/01 | 66 FR 53661 | 08/18/93 | |
| 6.42 | Reasonably Available Control Technology Requirements for Major Volatile Organic Compound- and Nitrogen Oxides-Emitting Facilities. | 10/23/01 | 66 FR 53661 | 03/17/99 | |
| 6.43 | Volatile Organic Compound Reduction Requirements. | 10/23/01 | 66 FR 53689 | 05/21/97 | |
| 6.45 | Standards of Performance for Existing Solid Waste Landfills. | 10/23/01 | 66 FR 53689 | 02/02/94 | |
| 6.44 | Standards of Performance for Existing Commercial Motor Vehicle and Mobile Equipment Refinishing Operations. | 10/23/01 | 66 FR 53661 | 09/20/95 | |
| 6.46 | Standards of Performance for Existing Ferroalloy and Calcium Carbide Production Facilities. | 10/23/01 | 66 FR 53661 | 12/21/94 | |
| 6.48 | Standard of Performance for Existing Bakery Oven Operations. | 10/23/01 | 66 FR 53661 | 07/19/95 | |
| 6.49 | Standards of Performance for Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry. | 10/23/01 | 66 FR 53664 | 06/20/01 | |
| 6.50 | NO _x Requirements for Portland Cement Kilns. | 11/19/02 | 67 FR 69688 | 03/20/02 | |

Reg 7—Standards of Performance for New Affected Facilities

| | | | | | |
|------------|---|----------|-------------|----------|--|
| 7.01 | General Provisions | 10/23/01 | 66 FR 53661 | 05/17/00 | |
| 7.06 | Standards of Performance for New Indirect Heat Exchangers. | 10/23/01 | 66 FR 53661 | 04/21/82 | |
| 7.07 | Standard of Performance for New Incinerators. | 10/23/01 | 66 FR 53661 | 09/15/93 | |
| 7.08 | Standards of Performance for New Process Operations. | 10/23/01 | 66 FR 53661 | 03/17/99 | |
| 7.09 | Standards of Performance for New Process Gas Streams. | 10/23/01 | 66 FR 53661 | 06/18/97 | |
| 7.11 | Standard of Performance for New Asphalt Paving Operations. | 10/23/01 | 66 FR 53661 | 05/15/91 | |
| 7.12 | Standard of Performance for New Storage Vessels for Volatile Organic Compounds. | 10/23/01 | 66 FR 53661 | 05/15/91 | |

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

| Reg | Title/subject | EPA approval date | Federal Register notice | District effective date | Explanation |
|------------|---|-------------------|-------------------------|-------------------------|-------------|
| 7.14 | Standard of Performance for Selected New Petroleum Refining Processes and Equipment. | 10/23/01 | 66 FR 53661 | 06/13/79 | |
| 7.15 | Standards of Performance for Gasoline Transfer to New Service Station Storage Tanks (Stage I Vapor Recovery). | 10/23/01 | 66 FR 53662 | 04/20/88 | |
| 7.18 | Standards of Performance for New Solvent Metal Cleaning Equipment. | 10/23/01 | 66 FR 53662 | 05/15/91 | |
| 7.20 | Standard of Performance for New Gasoline Loading Facilities at Bulk Plants. | 10/23/01 | 66 FR 53662 | 11/16/83 | |
| 7.22 | Standard of Performance for New Volatile Organic Materials Loading Facilities. | 10/23/01 | 66 FR 53662 | 03/17/93 | |
| 7.25 | Standard of Performance for New Sources Using Volatile Organic Compounds. | 10/23/01 | 66 FR 53662 | 03/17/93 | |
| 7.34 | Standard of Performance for New Sulfite Pulp Mills. | 10/23/01 | 66 FR 53662 | 06/13/79 | |
| 7.35 | Standard of Performance for New Ethylene Producing Plants. | 10/23/01 | 66 FR 53662 | 06/13/79 | |
| 7.36 | Standard of Performance for New Volatile Organic Compound Water Separators. | 10/23/01 | 66 FR 53662 | 06/13/79 | |
| 7.51 | Standard of Performance for New Liquid Waste Incinerators. | 10/23/01 | 66 FR 53662 | 01/20/88 | |
| 7.52 | Standard of Performance for New Fabric, Vinyl, and Paper Surface Coating Operations. | 10/23/01 | 66 FR 53662 | 05/15/91 | |
| 7.55 | Standard of Performance for New Insulation of Magnet Wire. | 10/23/01 | 66 FR 53662 | 03/17/93 | |
| 7.56 | Standard of Performance for Leaks from New Petroleum Refinery Equipment. | 10/23/01 | 66 FR 53662 | 05/15/91 | |
| 7.57 | Standard of Performance for New Graphic Arts Facilities Using Rotogravure and Flexography. | 10/23/01 | 66 FR 53662 | 05/15/91 | |
| 7.58 | Standard of Performance for New Factory Surface Coating Operations of Flat Wood Paneling. | 10/23/01 | 66 FR 53662 | 05/15/91 | |
| 7.59 | Standard of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations. | 10/23/01 | 66 FR 53662 | 04/23/96 | |
| 7.60 | Standard of Performance for New Synthesized Pharmaceutical Product Manufacturing Operations. | 10/23/01 | 66 FR 53662 | 05/15/91 | |
| 7.77 | Standards of Performance for New Blast Furnace Casthouses. | 10/23/01 | 66 FR 53662 | 10/20/93 | |
| 7.79 | Standards of Performance for New Commercial Motor Vehicles and Mobile Equipment Refinishing Operations. | 10/23/01 | 66 FR 53690 | 02/02/94 | |
| 7.81 | Standard of Performance for New or Modified Bakery Oven Operations. | 10/23/01 | 66 FR 53662 | 05/17/00 | |

Reg 8—Mobile Source Emissions Control

* * * * *

[FR Doc. 2012-24096 Filed 10-11-12; 8:45 am]

BILLING CODE 6560-50-P