

**Subpart RR—Tennessee**

■ 2. Amend § 52.2231 by adding paragraph (g) to read as follows:

**§ 52.2231 Control strategy: Sulfur oxides and particulate matter.**

\* \* \* \* \*

(g) Effective May 5, 2022, EPA has determined that the Sullivan County SO<sub>2</sub> nonattainment area (NAA) has failed to attain the 2010 1-hour primary sulfur dioxide (SO<sub>2</sub>) national ambient air quality standard (NAAQS) by the applicable attainment date of October 4, 2018. This determination triggers the requirements of CAA section 179(d) for the State of Tennessee to submit a revision to the Tennessee State Implementation Plan (SIP) for the Sullivan County SO<sub>2</sub> NAA to EPA by April 5, 2023. The SIP revision must, among other elements, provide for the attainment of the 1-hour primary SO<sub>2</sub> NAAQS in the Sullivan County SO<sub>2</sub> NAA as expeditiously as practicable but no later than April 5, 2027.

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R04-OAR-2021-0362; FRL-9502-02-R4]

**Air Plan Approval; Kentucky; 2015 8-Hour Ozone Nonattainment New Source Review Permit Program Requirements**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, on October 15, 2020. EPA is approving Kentucky's certification that existing Nonattainment New Source Review (NNSR) permitting regulations meet the nonattainment planning requirements for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) for Bullitt and Oldham Counties in the Louisville, KY-IN 2015 8-hour ozone Marginal nonattainment area and portions of Boone, Kenton, and Campbell Counties in the Cincinnati, OH-KY Marginal nonattainment area. This action is being approved pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

**DATES:** This rule is effective May 5, 2022.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0362. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. 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 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:** Pearlene Williams-Miles, 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, GA 30303-8960. The telephone number is (404) 562-9144. Ms. Williams-Miles can also be reached via electronic mail at [WilliamsMiles.Pearlene@epa.gov](mailto:WilliamsMiles.Pearlene@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On December 6, 2018, EPA issued a final rule entitled "Implementation of the 2015 National Ambient Air Quality Standards for ozone: State Implementation Plan Requirements" (SIP Requirements Rule), which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS. *See* 83 FR 62998; 40 CFR part 51, subpart CC.

Based on the nonattainment designation for the 2015 8-hour ozone NAAQS, Kentucky was required to develop a SIP revision addressing the requirements of CAA sections 172(c)(5) and 173 for Kentucky's 2015 8-hour ozone Marginal nonattainment areas. *See* 42 U.S.C. 7502(c). Section 172(c)(5) of the CAA requires each state with a

nonattainment area to submit a SIP revision requiring NNSR permits in the nonattainment area in accordance with the permitting requirements of CAA section 173. The minimum SIP requirements for NNSR permitting for the 2015 8-hour ozone NAAQS are located in 40 CFR 51.165. *See* 40 CFR 51.1314.

On October 15, 2020, Kentucky submitted a SIP revision addressing, among other things,<sup>1</sup> permit program requirements (*i.e.*, NNSR) for the 2015 8-hour ozone NAAQS for Kentucky's 2015 8-hour ozone Marginal nonattainment areas. Kentucky's October 15, 2020, SIP revision certifies that the version of 401 Kentucky Administrative Regulation 51:052, *Review of new sources in or impacting upon nonattainment areas*, in the SIP satisfies the federal NNSR requirements for the Kentucky 2015 8-hour ozone Marginal nonattainment areas.

On February 10, 2022, EPA published a Notice of Proposed Rulemaking (NPRM) proposing to approve the October 15, 2020, SIP revision regarding 2015 8-hour Ozone Nonattainment New Source Review Permit Program Requirements for Kentucky's 2015 8-hour ozone Marginal nonattainment areas. *See* 87 FR 7788. The February 10, 2022, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the February 10, 2022, NPRM were due on or before March 14, 2022. EPA received no comments on the February 10, 2022, NPRM.

**II. Final Action**

EPA is approving Kentucky's SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for Kentucky's 2015 8-hour ozone Marginal nonattainment areas, submitted on October 15, 2020. EPA has determined that Kentucky's submission fulfills the 40 CFR 51.1314 requirement and meets the requirements of CAA section 172(c)(5) and 173 and the minimum SIP requirements of 40 CFR 51.165.

**III. 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. *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. This action merely approves

<sup>1</sup> The other elements of Kentucky's submittal are being addressed in separate rulemakings.

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 13563 (76 FR 3821, January 21, 2011);
- 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 June 6, 2022. 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, Intergovernmental relations, Nitrogen oxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 30, 2022.

**Daniel Blackman,**  
*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, amend the table in paragraph (e) by adding an entry for “2015 8-hour Ozone NAAQS Nonattainment New Source Review Requirements” at the end of the table to read as follows:

**§ 52.920 Identification of plan.**  
\* \* \* \* \*  
(e) \* \* \*

**EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS**

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanations
2015 8-hour Ozone NAAQS Nonattainment New Source Review Requirements.	Bullitt and Oldham Counties in the Louisville, KY-IN Marginal nonattainment area and portions of Boone, Campbell, and Kenton Counties in the Cincinnati, OH-KY Marginal nonattainment area.	10/15/2020	4/5/2022, [Insert citation of publication].	

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