

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

[R04-OAR-2003-KY-0001-200410(a); FRL-7958-8]

**Approval and Promulgation of Implementation Plans for Kentucky: Regulatory Limit on Potential To Emit**

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky which incorporates Kentucky rule 401 KAR 52:080 into the Kentucky SIP. The Commonwealth submitted the revision on October 31, 2003. This rule affects sources whose actual emissions are less than 50 percent of the major source threshold whereas the sources' potential to emit (PTE) exceeds the major source threshold. The EPA is also notifying the public that the Agency's conditional approval of Kentucky rule 401 KAR 52:080, as submitted on March 15, 2001, and published on August 15, 2002, is disapproved as of October 15, 2003.

**DATES:** This direct final rule is effective October 24, 2005 without further notice, unless EPA receives adverse comment by September 23, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04-OAR-2003-KY-0001, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

4. Fax: (404) 562-9019.

5. Mail: "R04-OAR-2003-KY-0001," 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.

6. Hand Delivery or Courier. Deliver your comments to: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**Instructions:** Direct your comments to RME ID No. R04-OAR-2003-KY-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov), or e-mail. The EPA RME Web site and the federal [regulations.gov](http://regulations.gov) website are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI 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 in RME 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:** Michele Notarianni, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Phone: (404) 562-9031. E-mail: [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

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**I. Today's Action**

The EPA is approving into the Kentucky SIP rule 401 KAR 52:080, "Regulatory Limit on Potential to Emit," state effective October 31, 2003. The EPA is also notifying the public that the Agency's conditional approval of Kentucky rule 401 KAR 52:080, as submitted on March 15, 2001, and published on August 15, 2002, (67 FR 53312), is disapproved as of October 15, 2003. EPA is also correcting references to the SIP submittal date of 401 KAR 52:080 published August 15, 2002, (67 FR 53312) from July 10, 2001, to the correct date of March 15, 2001.

**II. Background**

On March 15, 2001, the Commonwealth of Kentucky submitted five rules, including rule 401 KAR 52:080, "Regulatory Limit on Potential to Emit," state effective January 15, 2001, to EPA for incorporation into the Kentucky SIP. Rule 401 KAR 52:080 was developed in accordance with a January 25, 1995, EPA memorandum, "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)." (This January 25, 1995, document is included in the docket for this action.) This memorandum outlines various approaches to establishing

federally-enforceable mechanisms to limit emissions from sources that desire to limit potential emissions to below major source levels.

EPA conditionally approved rule 401 KAR 52:080 based on the Agency's understanding of the rule, documented in a letter dated April 18, 2002, from the Commonwealth, and contingent upon Kentucky making four clarifications to the rule no later than one year from the effective date of the conditional approval action, which was October 15, 2003. See 67 FR 53312, August 15, 2002. (This April 18, 2002, document is included in the docket for today's action.) In a letter dated October 2, 2003, Kentucky notified EPA that the Commonwealth may not be able to submit a revised rule by October 15, 2003, due to possible delays from a statutory revision to Kentucky's promulgation process. Because Kentucky was unable to submit a revised rule 401 KAR 52:080 by October 15, 2003, the conditional approval automatically reverted to a disapproval. Although not required, EPA committed in its conditional approval action to publishing a disapproval action should this occur.

On October 31, 2003, Kentucky submitted a revised rule 401 KAR 52:080, state effective October 31, 2003, for incorporation into the Kentucky SIP. This rule addresses EPA's four requested clarifications and makes other nonsubstantive changes to the January 15, 2001, version. The April 18, 2002, letter from Kentucky stating the Commonwealth's interpretation of the rule's applicability still applies with the exception of the following references: Section 1(a) of the January 15, 2001, state effective referenced rule is renumbered as Section 2(1) in the October 31, 2003, state effective version and the letter's reference to 401 KAR 51:020 should read, "401 KAR 52:020." EPA is also clarifying in this document that Kentucky intended in its letter for the phrases, "above 50%" and "exceed 50%," to mean equal to or above 50 percent. The Commonwealth explains in the letter that Section 2(1) does not allow a source currently covered under this rule to increase its actual emissions to 50 percent or above (as clarified previously) a major source threshold under title V of the Clean Air Act by increasing its throughput or hours of operation. If a covered source increased its actual emissions to 50 percent or above (as clarified previously), the source would be immediately subject to title V permitting requirements and would be in violation of 401 KAR 52:080 and the applicable permit regulation (*i.e.*, either 401 KAR 52:020

or 401 KAR 52:030). (See also 67 FR 53312, August 15, 2002.)

### III. Rule Clarifications

The EPA is approving rule 401 KAR 52:080 into the Kentucky SIP in its entirety based upon the Commonwealth of Kentucky's interpretation of Section 2(1) of the rule (formerly Section 1(a)) as documented in a letter from the Kentucky Division for Air Quality dated April 18, 2002, and based upon the language of section 3(2)(a).

Kentucky addressed EPA's requested rule clarifications as described below. The clarifications to subsection (3) of section 3 (formerly numbered as section 2(3)) change the actions which trigger noncompliance requirements for a covered source. The previous rule that EPA conditionally approved identified receipt of a notice of violation (NOV) for exceeding the major source threshold as the action which triggered noncompliance with the rule. However, issuance of NOVs is discretionary and thus, a source could potentially operate at 50 percent or above a major source threshold without receiving an NOV to trigger the rule's requirement to submit an application for a title V permit. The clarifications specify any of four actions which could trigger noncompliance with the rule, one of which involves the failure to restrict actual emissions during each consecutive 12 month period of operation after January 1, 1996, to less than 50 percent of the major source thresholds for the title V program. The other actions include failure to comply with notification, recordkeeping, and reporting requirements; failure to allow authorized cabinet representatives to enter the premises as specified; and inability to demonstrate compliance with applicable requirements at the cabinet's request.

Subsection (3)(a) of section 3 is modified to address an issue of enforceability to reflect the Commonwealth's law prohibiting its rules from being more stringent than federal rules. If a source receives an NOV for actual emissions equal to or greater than 50 percent of a major source threshold, section 3(3) sets a 12-month limit, formerly six months, for a source to submit a title V application as required under subsection (a)(1)(i) of section 70.5, "Permit Applications," of 40 CFR part 70, "State Operating Permit Programs."

Section 5 (formerly numbered as section 4) is clarified to address reporting exceedances of the 50 percent limit. Section 5(2) requires a source to contact the Kentucky Division for Air Quality if the source plans to make a

change that will cause its actual emissions during any consecutive 12-month period of operation to be 50 percent or more of a major source threshold for the title V program. In addition, the source must submit an application for either a title V permit under 401 KAR 52:020 or a conditional major permit under 401 KAR 52:030. Section 5 requirements previously applied only to modifications or reconstructions; now they must be met if a covered source makes any change, including those that will result in exceedance of 50 percent or more of a major source threshold. Clarifications to section 3(3) described earlier in this document ensure that each incidence of noncompliance with this rule is considered a separate violation until a title V or conditional major permit is issued to the source.

### IV. Effects of This Action

Approximately 60–70 sources in Kentucky meet the requirements of and are complying with 401 KAR 52:080. These sources do not have to apply for and receive a title V permit as long as they meet the requirements of this regulation. Additionally, the regulation will apply to similar sources constructed after December 14, 1995, and those that may construct in the future, that meet the applicability requirements of the regulation.

### V. Final Action

The EPA is approving into the Kentucky SIP regulation 401 KAR 52:080, which is state effective October 31, 2003, and which was submitted on October 31, 2003, because it is consistent with the requirements of the Clean Air Act and EPA policy. The EPA is also notifying the public that the Agency's conditional approval of Kentucky rule 401 KAR 52:080, as submitted on March 15, 2001, and as published on August 15, 2002, (67 FR 53312), is disapproved as of October 15, 2003. EPA is also correcting references to the SIP submittal date of 401 KAR 52:080 published August 15, 2002, (67 FR 53312) from July 10, 2001, to the correct date of March 15, 2001.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 24, 2005 without further notice unless the

Agency receives adverse comments by September 23, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 24, 2005, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 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 October 24, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 12, 2005.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

n 40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart S—Kentucky

##### § 52.919 [Removed and reserved]

n 2. Section 52.919 is removed and reserved.

n 3. In § 52.920, in paragraph (c), Table 1 is amended:

n a. By adding, in numerical order, a new entry for "Chapter 52 Permits, Registrations, and Prohibitory Rules," and

n b. By adding a new entry under Chapter 52 for 401 KAR 52:080, "Regulatory limit on potential to emit," to read as follows:

##### § 52.920 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

TABLE 1.—EPA-APPROVED KENTUCKY REGULATIONS

| State citation  | Title/subject                               | State effective date | EPA approval date                             | Explanations |
|---|---|----------------------|---|--------------|
| *   | *   | *                    | *   | *            |
| <b>Chapter 52 Permits, Registrations, and Prohibitory Rules</b> |   |                      |   |              |
| 401 KAR 52:080 .....  | Regulatory limit on potential to emit ..... | 10/31/03             | 8/24/05.<br>[Insert citation of publication]. |              |
| *   | *   | *                    | *   | *            |

\* \* \* \* \*

[FR Doc. 05–16804 Filed 8–23–05; 8:45 am]  
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03–OAR–2005–PA–0011; FRL–7958–1]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO<sub>x</sub> RACT Determinations for Five Individual Sources

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for five major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) pursuant to the Commonwealth of Pennsylvania's

(Pennsylvania's or the Commonwealth's) SIP-approved generic RACT regulations. EPA is approving these revisions in the SIP in accordance with the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective on September 23, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–0011. All documents in the docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Once in the system, select “quick search,” then key in the appropriate RME identification number. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) 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 in RME or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650

Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814–2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 4, 2003, PADEP submitted a formal SIP revision that consists of source-specific operating permits and/or plan approvals issued by PADEP to establish and require RACT pursuant to the Commonwealth's SIP-approved generic RACT regulations. On March 30, 2005 (70 FR 16115), EPA published a direct final rule (DFR) approving revisions to PADEP-issued operating permits which establish and require RACT for five individual sources. The following table identifies the sources and the individual plan approvals (PAs) and operating permits (OPs) which are the subject of this rulemaking.

#### PENNSYLVANIA—VOC AND NO<sub>x</sub> RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

| Source's name                            | County         | Plan approval (PA #) operating permit (OP #) | Source type                     | “Major source” pollutant |
|--|----------------|--|---------------------------------|--------------------------|
| R.H. Sheppard Co., Inc .....             | York .....     | 67–2016 .....                                | Foundry operations .....        | VOC                      |
| Wheatland Tube Co .....                  | Mercer .....   | OP 43–182 .....                              | Steel pipe manufacturing .....  | VOC                      |
| Transcontinental Gas Pipeline Corp ..... | Potter .....   | OP–53–0006 .....                             | Natural gas units .....         | VOC/NO <sub>x</sub>      |
| Transcontinental Gas Pipeline Corp ..... | Columbia ..... | OP–19–0004 .....                             | Natural gas-fired engines ..... | VOC/NO <sub>x</sub>      |
| Transcontinental Gas Pipeline Corp ..... | Lycoming ..... | PA–41–0005A .....                            | Natural gas-fired engines ..... | VOC/NO <sub>x</sub>      |

An explanation of the CAA's RACT requirements as they apply to the Commonwealth and EPA's rationale for approving these SIP revisions were provided in the DFR and will not be restated here. In accordance with direct final rulemaking procedures, on March 30, 2005 (70 FR 16203), EPA also published a companion notice of

proposed rulemaking (NPR) on these SIP revisions inviting interested parties to comment on the DFR. Timely adverse comments were submitted on EPA's March 30, 2005 DFR.

On May 26, 2005 (70 FR 30377), due to receipt of the adverse comments submitted in response to the DFR, EPA published a withdrawal of the DFR. A

summary of those comments and EPA's responses are provided in Section II of this document.

#### II. Summary of Public Comments and EPA Responses

*Comment:* On April 9, 2005, a citizen submitted adverse comments on EPA's DFR notice approving PADEP's VOC