

Register. The Commission directs the Secretary to arrange for publication of this order in the **Federal Register**.

It is ordered:

1. The Commission adopts the direct final rule that follows the Secretary's signature into the Commission's Rules of Practice and Procedure.

2. Interested persons may submit comments within 30 days of publication in the **Federal Register**.

3. The Secretary shall arrange for publication of this order in the **Federal Register**. These actions will take effect 40 days after publication in the **Federal Register**.

List of Subjects in 39 CFR Part 3030

Administrative practice and procedure; Postal Service.

By the Commission.

Shoshana M. Grove,
Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3030—RULES FOR COMPLAINTS

■ 1. The authority citation for part 3030 continues to read as follows:

Authority: 39 U.S.C. 503; 3662.

■ 2. Revise § 3030.11 to read as follows:

§ 3030.11 Service.

Any person filing a complaint must simultaneously serve a copy of the complaint on the Postal Service at the following address:

PRCCOMPLAINTS@usps.gov. A complaint is not deemed filed until it is served on the Postal Service. A waiver may be obtained pursuant to § 3001.9(a) of this chapter.

[FR Doc. E9-25343 Filed 10-22-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2005-KY-0003; FRL-8972-2]

Approval and Promulgation of Implementation Plans; Kentucky: NO_x SIP Call Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the State Implementation Plan

(SIP) revisions submitted by the Commonwealth of Kentucky on September 12, 2005, and March 24, 2006. The first revision provides Kentucky's response to EPA's regulations entitled, "Finding of Significant Contribution and Rulemaking for Certain States in Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "Nitrogen Oxides (NO_x) SIP Call Phase I." The second revision responds to EPA's regulations entitled, "Interstate Ozone Transport: Response to Court Decisions on the NO_x SIP Call, NO_x SIP Call Technical Amendments, and Section 126 Rules," otherwise known as the "NO_x SIP Call Phase II." EPA proposed to approve Kentucky's request to revise the SIP on May 29, 2009. This action is being taken pursuant to Section 110 of the Clean Air Act (CAA).

DATES: *Effective Date:* This rule will be effective November 23, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R04-OAR-2005-KY-0003. 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: Deanne Grant, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9291. Ms. Grant can also be reached via electronic mail at grant.deanne@epa.gov. For information relating to the Kentucky SIP, please contact Mr. Zuri Farnigalo at (404) 562-

9152. Mr. Farnigalo can also be reached via electronic mail at farnigalo.zuri@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. EPA's Action

EPA is taking final action to approve SIP revisions submitted by the Commonwealth of Kentucky on September 12, 2005, and March 24, 2006. The first revision provides Kentucky's response to EPA's regulations entitled, "Finding of Significant Contribution and Rulemaking for Certain States in Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "Nitrogen Oxides (NO_x) SIP Call Phase I." The second revision responds to EPA's regulations entitled, "Interstate Ozone Transport: Response to Court Decisions on the NO_x SIP Call, NO_x SIP Call Technical Amendments, and Section 126 Rules," otherwise known as the "NO_x SIP Call Phase II."

The NO_x SIP Call Phase II revision satisfies EPA's rule that requires Kentucky to submit Phase II revisions necessary to achieve applicable, incremental reductions of NO_x. The intended effect of the Phase II SIP revision is to reduce emissions of NO_x originating in the Commonwealth of Kentucky to help attain and maintain the national ambient air quality standard for ozone. The March 24, 2006, final submittal stopped the Federal implementation plan (FIP) clock that started on February 8, 2006, when EPA made a finding that Kentucky failed to submit the required SIP for Phase II of the NO_x SIP Call by April 1, 2005.

EPA proposed to approve Kentucky's request to amend the SIP on May 29, 2009 (74 FR 25686). In that proposal, EPA also stated its intent to remove compliance requirements of the NO_x SIP Call Phase I. The comment period closed on June 29, 2009. No comments were received in regard to this action. EPA is finalizing the approval as proposed based on the rationale stated in the proposal and in this final action.

II. Background

On January 31, 2002, the Kentucky Environmental and Public Protection Cabinet (KEPPC) submitted final revisions to its SIP that complied with the requirements of Phase I of the NO_x SIP Call. EPA approved the revisions on April 11, 2002 (67 FR 17624), which

became effective on June 10, 2002. On April 21, 2004, EPA published a final rule, addressing the remanded portion of the NO_x SIP Call Rule. This rule is entitled, "Interstate Ozone Transport: Response to Court Decisions on the NO_x SIP Call, NO_x SIP Call Technical Amendments, and Section 126 Rules," and is otherwise known as the "NO_x SIP Rule Phase II" (69 FR 21604). Phase II of the NO_x SIP Call required Kentucky to reduce the Phase I NO_x emissions originating in the Commonwealth from 165,075 tons (Phase I Budget) to 162,519 tons (Phase II Budget) of NO_x emissions. (69 FR 21604, 21629, April 21, 2004). However, EPA approved a revised Phase I Budget for Kentucky in a revision to the NO_x SIP Call submitted on April 11, 2002 (67 FR 17624). Therefore, the final Kentucky Phase II Budget in the April 21, 2004, notice is inaccurate because it is based on the previous Phase I Budget. The current approved Kentucky Phase II Budget for NO_x emissions is 162,863 tons.

On January 23, 2004, EPA wrote a letter to KEPPC clarifying that based on current rules and regulations, including the NO_x SIP Call Phase I rulemaking (63 FR 57356, 57416) and 40 CFR 96.2, EPA was allowing each State with one or more carbon monoxide (CO) boiler combusting CO from fluidized catalytic cracking units (FCCUs) to determine whether all of the Commonwealth's FCCU-CO boilers were covered by the NO_x SIP Call trading program. There is currently only one facility in Kentucky with FCCU-CO boilers (the Ashland Oil facility, located in Ashland, Kentucky). Kentucky elected to exclude all FCCU-CO boilers in the Commonwealth from the NO_x trading program. Today's action removes the requirement from the Kentucky SIP that such units comply with the NO_x SIP Call Phase I by exempting them from the non-EGU portion of the Kentucky NO_x budget. However, Kentucky is still able to meet the Phase II budgets through other reductions. For more information regarding the specifics of Phase I source categories and budgets, see 67 FR 17624 (April 11, 2002).

On September 12, 2005, the KEPPC provided a submittal for parallel processing of its SIP regulation revisions, intended to meet the requirements of the NO_x SIP Call Phase II. A public hearing was conducted on October 21, 2005. On March 24, 2006, Kentucky submitted the final SIP revision for approval. The March 24, 2006, submittal stopped the FIP clock that started under the CAA following EPA's February 8, 2006, finding that Kentucky failed to submit the required

SIP revisions for Phase II of the NO_x SIP Call by April 1, 2005 (71 FR 6347, February 8, 2006).

III. Final Action

EPA is taking final action to approve the aforementioned changes to the SIP, including Kentucky's NO_x SIP Call Phase II budget. These revisions meet CAA requirements and are consistent with EPA policy and regulations.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 December 22, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 9, 2009.

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 S—Kentucky

- 2. In § 52.920(c), Table 1 is amended:
- a. Under Chapter 51, by adding an entry for “401 KAR 51:150—NO_x

requirements for stationary internal combustion engines”; and

■ b. Under Chapter 51, by revising the entry for “401 KAR 51:160—NO_x

requirements for large utility and industrial boilers” 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	Explanation
*	*	*	*	*
Chapter 51. Attainment and Maintenance of the National Ambient Air Quality Standards				
*	*	*	*	*
401 KAR 51:150	NO _x requirements for stationary internal combustion engines.	2/3/06	10/23/09 [Insert citation of publication]	
*	*	*	*	*
401 KAR 51:160	NO _x requirements for large utility and industrial boilers.	2/3/06	10/23/09 [Insert citation of publication]	
*	*	*	*	*

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[FR Doc. E9–25456 Filed 10–22–09; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 070717342–7713–02]

RIN 0648–XS18

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Suspension of Minimum Atlantic Surfclam Size Limit for Fishing Year 2010

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; suspension of the Atlantic surfclam minimum size limit.

SUMMARY: NMFS suspends the minimum size limit for Atlantic surfclams for the 2010 fishing year. This action is taken under the authority of the implementing regulations for this fishery, which allow for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a

regulatory burden that is not necessary, as the majority of surfclams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2010, through December 31, 2010.

ADDRESSES: Written inquiries may be sent to: Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, (978) 281–9165; fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the regulations implementing the Fishery Management Plan (FMP) for the Atlantic Surfclam and Ocean Quahog Fisheries authorizes the Administrator, Northeast Region, NMFS (Regional Administrator), to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surfclams. This action may be taken unless discard, catch, and biological sampling data indicate that 30 percent of the Atlantic surfclam resource is smaller than 4.75 inches (120 mm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its June 2009 meeting, the Mid-Atlantic Fishery Management Council

voted to recommend that the Regional Administrator suspend the minimum size limit for the 2010 fishing year. In accordance with the provisions of the FMP, the Regional Administrator will publish the suspension of the surfclam minimum size if the proportion of undersized surfclams is under 30 percent of the total surfclam landings for each fishing year.

Commercial surfclam data for 2009 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 6.10 percent of the overall commercial landings were composed of surfclams that were less than 4.75 inches (120 mm). Based on these data, the Regional Administrator adopts the Council's recommendation and suspends the minimum size limit for Atlantic surfclams from January 1 through December 31, 2010.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 19, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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