

hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA-R04-OAR-2007-1186." 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://www.regulations.gov>, 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 through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, 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 <http://www.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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2007-1186. All documents in the docket are listed on the www.regulations.gov index. 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 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: Mr. Zuri Farngalo, 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) 562-9152. Mr. Farngalo can also be reached via electronic mail at farngalo.zuri@epa.gov.

SUPPLEMENTARY INFORMATION: The proposed rule was signed by the Acting Regional Administrator on January 20, 2010, and published in the **Federal Register** on January 20, 2010 (75 FR 3183). The comment period for this proposed action closed on February 19, 2010. EPA did receive adverse comments during this public comment period. However, EPA noticed an inadvertent omission of the July 15, 2009, supplement that Kentucky, provided from the electronic docket at <http://www.regulations.gov>. The July 15, 2009, supplement (which was included in the electronic docket on February 4, 2010), contains updated emissions inventory projections for both the Paducah and Owensboro Areas. Since EPA makes reference to this supplement in the January 20, 2010, proposed rulemaking, EPA is reopening the comment period for this proposed action for the limited purpose of allowing the public the opportunity to review and consider this supplemental information in regards to EPA's proposed rulemaking. EPA is already in receipt of adverse comments provided for the initial proposed rulemaking published on January 20, 2010, for the Owensboro 110(a)(1) maintenance plan. These comments will still be under consideration for any final rulemaking action for this area's 110(a)(1) maintenance plan.

Dated: March 17, 2010.

Beverly H. Banister,
Acting Regional Administrator, Region 4.
[FR Doc. 2010-7317 Filed 3-31-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2009-1014-201002; FRL-9133-1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to Kentucky's State Implementation Plan (SIP), submitted by the Kentucky Energy and Environment Cabinet, through the Kentucky Division of Air Quality (KDAQ) to EPA on February 5, 2010. The proposed revision modifies Kentucky's prevention of significant deterioration (PSD) and nonattainment new source review (NSR) permitting regulations in the SIP to address permit requirements promulgated in the 1997 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) Implementation Rule—Phase 2 (hereafter referred to as the "Ozone Implementation NSR Update"). The Ozone Implementation NSR Update revised permit requirements relating to the implementation of the 1997 8-hour ozone NAAQS specifically incorporating nitrogen oxides (NO_x) as a precursor to ozone. The proposed revision also includes provisions addressing permit requirements promulgated by EPA on May 1, 2007, which exclude from the NSR major source permitting requirements "chemical process plants" that produce ethanol through a natural fermentation process (hereafter referred to as the "Ethanol Rule").

DATES: Comments must be received on or before May 3, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2009-1014, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* benjamin.lynorae@epa.gov.
3. *Fax:* (404) 562-9019.
4. *Mail:* EPA-R04-OAR-2009-1014, 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.

5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, 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. 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 Docket ID No. "EPA–R04–OAR–2009–1014." 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://www.regulations.gov>, 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 through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, 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 <http://www.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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. 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 <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Kentucky SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. *Telephone number:* (404) 562–9352; *e-mail address:* bradley.twunjala@epa.gov. For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. *Telephone number:* (404) 562–9214; *e-mail address:* adams.yolanda@epa.gov. For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. *Telephone number:* (404) 562–9029; *e-mail address:* spann.jane@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What Action Is EPA Proposing Today?
- II. What Is the Background for the Action That EPA Is Proposing To Take Today?
- III. What Is EPA's Analysis of Kentucky's SIP Revision?
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing Today?

The Commonwealth of Kentucky, through KDAQ, submitted a revision on February 5, 2010, to the Kentucky SIP which relates to Kentucky's Air Quality Regulations, Chapter 51—401 KAR 51:001 "Definitions for 401 KAR Chapter 51," 401 KAR 51:017 "Prevention of Significant Deterioration of Air Quality," and 401 KAR 51:052 "Review of New Sources in or Impacting upon Nonattainment Areas." The SIP revision addresses the Ozone Implementation NSR Update requirements for Kentucky to include NO_x as an ozone precursor for permitting purposes. Specifically, the Ozone Implementation NSR Update requirements included changes to major

source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that NO_x emissions are ozone precursors. The proposed revision also includes provisions for excluding "chemical process plants" that produce ethanol through a natural fermentation process from the NSR major source permitting requirements. Pursuant to section 110 of the Clean Air Act (CAA or Act), EPA is proposing to approve these revisions into the Kentucky SIP.

Additionally, the rule revision provided in Kentucky's February 5, 2010, submittal updates Kentucky's PSD and NSR permitting regulations to make them consistent with changes to the Federal regulations by removing the existing standards and requirements for clean units (CU) and pollution control projects (PCP). However, EPA is not taking action on the Kentucky rule updates regarding CU and PCP because these portions of Kentucky's rule are specifically not approved into Kentucky's federally-approved SIP.

II. What Is the Background for the Action That EPA Is Proposing To Take Today?

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. As part of the 2004 designations, EPA also promulgated an implementation rule for the 1997 8-hour ozone NAAQS in two phases. Phase 1 of EPA's 1997 8-hour ozone implementation rule (Phase 1 Rule), published on April 30, 2004, effective on June 15, 2004, provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA (69 FR 23857).

On November 29, 2005, EPA promulgated the second phase for implementation provisions related to the 1997 8-hour ozone standards—also known as the Phase 2 Rule (70 FR 71612). The Phase 2 Rule addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations and NSR, and the impact to reformulated gas for

the 1997 8-hour ozone NAAQS transition. Specific to this rulemaking, the Phase 2 Rule made changes to Federal regulations 40 CFR 51.165 and 51.166, which govern the NNSR and PSD permitting programs. Pursuant to these changes, states were required to submit SIP revisions incorporating NO_x as an ozone precursor by no later than June 15, 2007. Kentucky's February 5, 2010, SIP submission (the subject of this action) addresses the state requirement to adopt provisions to include NO_x as a precursor for ozone for PSD and NNSR permitting purposes.

In addition, on May 1, 2007, EPA promulgated revisions to the PSD and NNSR regulations to address applicability of permitting requirements for "chemical process plants" (72 FR 24059). The revisions to 40 CFR 51.165, 51.166, 52.21, and Appendix S, define "chemical process plants" under the regulatory definition of "major stationary source" to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes. Kentucky's February 5, 2010, SIP submission addresses these minimum program elements of the PSD and NNSR programs for "chemical processing plants."

III. What Is EPA's Analysis of Kentucky's SIP Revision?

On February 5, 2010, the Commonwealth of Kentucky submitted a revision to EPA for approval which revised the Commonwealth's permitting provisions to adopt EPA's Federal regulations specified in the Ozone Implementation NSR Update relating to the incorporation of NO_x as an ozone precursor and to address permitting requirements specified in EPA's Ethanol Rule. Specifically, the revision relates to Kentucky's Air Quality Regulations, Chapter 51—401 KAR 51:001 "Definitions for 401 KAR Chapter 51," 401 KAR 51:017 "Prevention of Significant Deterioration of Air Quality," and 401 KAR 51:052 "Review of New Sources in or Impacting upon Nonattainment Areas." The revision became state-effective on February 5, 2010. The submittal revised Kentucky's PSD and NNSR permit programs to make them consistent with changes to the Federal regulations set forth in the Ozone Implementation NSR Update. These changes include changes to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating

that NO_x emissions are ozone precursors. In addition, the submittal revised Kentucky's PSD and NNSR permit programs to make them consistent with changes to the Federal regulations set forth in EPA's Ethanol Rule. These changes include changes to the regulatory definition of "major stationary source" to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes. These changes affect both the applicability threshold and whether this industry must count fugitive emissions in determining its major source status.

The revision included in Kentucky's PSD and NNSR programs are substantively the same as the Ozone Implementation NSR Update and the Ethanol Rule. The Kentucky rules have been formatted to conform to Kentucky rule drafting standards (KRS Chapter 13A), but in substantive content the rules are the same as the Federal rules. As part of its review of the Kentucky submittal, EPA performed a line-by-line review of the proposed revisions and has determined that they are consistent with the permit program requirements for NSR, set forth at 40 CFR 51.165 and 51.166.

Kentucky's February 5, 2010, SIP submission providing the PSD and NNSR rule revisions also includes the removal of provisions that were vacated by the United States Court of Appeals for the District of Columbia Circuit.¹ Since EPA did not take action on Kentucky's SIP with regard to the vacated portions (i.e., these provisions were not incorporated into the federally-approved SIP), EPA is not taking action through this rulemaking on the removal of these provisions as provided in Kentucky's February 5, 2010, submittal.

IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve Kentucky's SIP revision, submitted February 5, 2010, which incorporates NO_x as an ozone precursor for permitting purposes into the Kentucky SIP, and addresses major source applicability for ethanol manufacturing facilities. EPA is proposing to approve these revisions because they are consistent with the CAA, and EPA regulation and policy.

¹ On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52, regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the "2002 NSR Reform Rules." On June 24, 2005, the United States Court of Appeals for the DC Circuit Court vacated portions of the 2002 NSR Reform Rules pertaining to CU and PCP.

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed 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 proposed 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.

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.

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

Dated: March 17, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010-7319 Filed 3-31-10; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Parts 383, 384, 390, 391, and 392**

[Docket No. FMCSA-2009-0370]

RIN 2126-AB22

Limiting the Use of Wireless Communication Devices

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) proposes to prohibit texting by commercial motor vehicle (CMV) drivers while operating in interstate commerce and to impose sanctions, including civil penalties and disqualification from operating CMVs in interstate commerce, for drivers who fail to comply with this rule. Additionally, motor carriers would be prohibited from requiring or allowing their drivers to engage in texting while driving. FMCSA also proposes amendments to its commercial driver's license (CDL) regulations to add to the list of disqualifying offenses a conviction under State or local laws, regulations, or ordinances that prohibit texting by CDL drivers while operating a CMV, including school bus drivers. Recent research commissioned by FMCSA shows that the odds ratio of being involved in a safety-critical event (*e.g.*, crash, near-crash, lane departure) is 23.2 times greater for drivers who engage in texting while driving than for those who do not. This rulemaking would increase safety on the Nation's highways by reducing the prevalence of or preventing certain truck- and bus-related crashes, fatalities, and injuries associated with distracted driving.

DATES: Comments and related material must be received on or before May 3, 2010.

ADDRESSES: You may submit comments identified by docket number FMCSA-2009-0370 using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

- *Fax:* 202-493-2251.

- *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rule, contact Mr. Brian Routhier, Transportation Specialist, Federal Motor Carrier Safety Administration, Vehicle and Roadside Operation Division, at 202-366-1225 or Brian.Routhier@dot.gov.

SUPPLEMENTARY INFORMATION:**Table of Contents for Preamble**

- I. Public Participation and Request for Comments
 - A. Submitting Comments
 - B. Viewing Comments and Documents
 - C. Privacy Act
- II. Abbreviations
- III. Background
 - A. Legal Authority
 - B. Overview of Driver Distraction and Texting
 - C. Support for a Texting Prohibition
 - D. Studies on Driver Distraction
 - E. Existing Texting Bans by Federal, State, and Local Government
- IV. Discussion of Proposed Rule
- V. Regulatory Analyses

I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide.

Pilot Project on Open Government and the Rulemaking Process

On January 21st, 2009, President Obama issued a Memorandum on

Transparency and Open Government in which he described how: "public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge."

To support the President's open government initiative, DOT has partnered with the Cornell eRulemaking Initiative (CeRI) in a pilot project, Regulation Room, to discover the best ways of using Web 2.0 and social networking technologies to: (1) Alert the public, including those who sometimes may not be aware of rulemaking proposals, such as individuals, public interest groups, small businesses, and local government entities that rulemaking is occurring in areas of interest to them; (2) increase public understanding of each proposed rule and the rulemaking process; and (3) help the public formulate more effective individual and collaborative input to DOT. Over the course of several rulemaking initiatives, CeRI will use different Web technologies and approaches to enhance public understanding and participation, work with DOT to evaluate the advantages and disadvantages of these techniques, and report their findings and conclusions on the most effective use of social networking technologies in this area.

DOT and the Obama Administration are striving to increase effective public involvement in the rulemaking process and strongly encourage all parties interested in this rulemaking to visit the Regulation Room Web site, <http://www.regulationroom.org>, to learn about the rule and the rulemaking process, to discuss the issues in the rule with other persons and groups, and to participate in drafting comments that will be submitted to DOT. In this rulemaking, CeRI will submit to the rulemaking docket a Summary of the discussion that occurs on the Regulation Room site; participants will have the chance to review a draft and suggest changes before the Summary is submitted. Participants who want to further develop ideas contained in the Summary, or raise additional points, will have the opportunity to collaboratively draft joint comments that will be also be submitted to the rulemaking docket before the comment period closes.

Note that Regulation Room is not an official DOT Web site, and so participating in discussion on that site is not the same as commenting in the rulemaking docket. The Summary of discussion and any joint comments