

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security

Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

#### ADDRESSES.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary § 165.T11-283 to read as follows:

#### § 165.T11-283 Safety Zone; Havasu Landing Annual Regatta; Colorado River, Lake Havasu Landing, CA.

(a) *Location.* The limits of the safety zone will be the navigable waters of the San Diego Bay bounded by the following coordinates:

From the California shoreline in position 34°29.40' N 114°24.12' W to the northern corner 900 yards east in position 34°29.40' N 114°23.39' W to the southern corner 1400 yards south in position 34°29.0' N 114°23.39' W to the California shoreline in position 34°29.0' N 114°24.12' W.

(b) *Enforcement Period.* This section will be enforced from 8 a.m. to 4 p.m. on January 16, 2010 and January 17, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative*, means any

commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF-FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: January 6, 2010.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R04-OAR-2007-0500-200927; FRL-9102-6]

#### Approval and Promulgation of Implementation Plans; Kentucky: Approval of Revisions to the State Implementation Plan

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

**ACTION:** Final rule.

**SUMMARY:** EPA is correcting the state implementation plan (SIP) for the Commonwealth of Kentucky to remove the "Potentially hazardous matter or toxic substances" rule upon request of the Commonwealth of Kentucky made through the Kentucky Division for Air Quality (KDAQ). EPA has determined that this rule—401 Kentucky Administrative Regulations (KAR) 63:020—was erroneously incorporated into the SIP because the rule is not related to the attainment and maintenance of the national ambient air

quality standards (NAAQS). For this reason, EPA is correcting this error and removing this rule from the approved Kentucky SIP pursuant to section 110(k)(6) of the Clean Air Act (CAA). This final rule also addresses comments made on the proposed rulemaking EPA previously published for this action.

**DATES:** *Effective Date:* This rule will be effective February 16, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2007-0500. 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:** 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. The telephone number is (404) 562-9040. Ms. Benjamin can also be reached via electronic mail at [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. What Action Is EPA Taking?**

EPA is taking final action to remove 401 KAR 63:020 from the Kentucky SIP. EPA has determined that this rule was erroneously incorporated into the SIP because the rule is not related to the

attainment and maintenance of the NAAQS. EPA is correcting this error and removing this rule from the approved Kentucky SIP.

**II. What Is the Background for the Action?**

The CAA requires EPA to establish NAAQS for commonly occurring air pollutants that pose public health and welfare threats. These pollutants are known as criteria pollutants. Currently, NAAQS exist for six criteria pollutants—ozone (ground level), particulate matter, carbon monoxide, sulfur dioxide, lead and nitrogen dioxide. Section 110 of the CAA requires states to adopt, and submit to EPA for approval, SIPs to implement, maintain and enforce the NAAQS. Accordingly, SIPs contain the measures used by states to attain and maintain the NAAQS. Consistent with Section 110 of the CAA, provisions approved by EPA as part of a SIP should be related to attainment and maintenance of the NAAQS for the six criteria pollutants. Other pollutants, such as hazardous air pollutants are covered by other provisions of the CAA, such as Section 112, which provides for the direct Federal regulation of hazardous air pollutants.

The first significant amendments to the CAA occurred in 1970 and 1977. Following these amendments, a large number of SIPs were submitted to EPA to fulfill new Federal requirements. In many cases, states and districts submitted their entire programs, including many elements not required pursuant to the CAA. Due to resource constraints during this timeframe, EPA's review of these submittals focused primarily on the required technical, legal, and enforcement elements of the submittals. At the time, EPA did not perform a detailed review of the numerous provisions submitted to determine if each provision was related to the attainment and maintenance of the NAAQS. As a result, some provisions were approved into SIPs erroneously. To correct such errors, EPA has removed the erroneously incorporated provisions from SIPs under the authority of Section 110(k)(6) of the CAA. See *e.g.*, 73 FR 21546 (removing rules from New York SIP imposing general duty not to cause air pollution or odors); 71 FR 13551 (removing nuisance rule from Georgia SIP); 66 FR 57391 (removing from the Missoula City-County portion of the Montana SIP provisions relating to, among other things, fluoride emission standards); 64 FR 7790 (removing from Michigan SIP a general air pollution rule which had been used primarily to

address odors and other nuisances, and had not been used for purposes of attaining or maintaining NAAQS); 61 FR 47058 (removing provisions from Wyoming SIP relating to, among other things, hydrogen sulfide and fluoride ambient standards, and odor control).

After the 1977 CAA Amendments, the Commonwealth of Kentucky included the "Potentially hazardous matter or toxic substances" rule at 401 KAR 63:020 as part of a voluminous SIP submittal to EPA. EPA approved 401 KAR 63:020 as part of the Kentucky SIP on July 12, 1982, with a September 10, 1982, effective date. 47 FR 30059.<sup>1</sup> This Kentucky rule applies to facilities "which emit[] or may emit potentially hazardous matter or toxic substances as defined in Section 2, provided such emissions are not elsewhere subject to the provisions of the regulations of the Division of Air Pollution." 401 KAR 63:020 Section 1. "Potentially hazardous matter or toxic substances" is defined in Section 2 of the rule to mean "matter which may be harmful to the health and welfare of humans, animals, and plants, including, but not limited to, antimony, arsenic, bismuth, lead, silica, tin and compounds of such materials." The rule prohibits emissions of "potentially hazardous matter or toxic substances in such quantities or duration as to be harmful to the health and welfare of humans, animals and plants." 401 KAR 63:020 Section 3.

On May 25, 2007, Kentucky, through KDAQ, requested that EPA correct the Kentucky SIP by deleting this rule. In addition, KDAQ has explained to EPA that 401 KAR 63:020 "has never been used by the Cabinet to regulate emissions of any of the six criteria pollutants in any way that is related to the attainment and maintenance of the NAAQS \* \* \* Nor have any reduction credits ever been claimed under this regulation." (March 31, 2008, letter from John S. Lyons, Director, KDAQ to Beverly Banister, Director, Air, Pesticides, and Toxics Management Division, EPA Region 4) ("March 31st letter"). Instead, Kentucky has "used this rule as a risk-based Screening tool for toxic air emissions and [the rule] has been the authority under which modeling and permit conditions have been imposed." (March 31st letter). Kentucky has not relied on or attributed any emission reductions from this rule to any NAAQS attainment or maintenance plans required under Section 110 of the CAA. (June 15, 2009, letter from John S. Lyons, Director,

<sup>1</sup> The table at 40 CFR 52.920 contains an incorrect Federal Register citation for EPA's approval date of 401 KAR 63:020.

KDAQ to Carol L. Kemker, Acting Director, Air, Pesticides, and Toxics Management Division, EPA Region 4) (June 15th letter). In sum, Kentucky has consistently used this rule to address hazardous or toxic air pollutants, and has never used this rule to regulate CAA Section 110 criteria pollutants in any way that is related to the attainment and maintenance of NAAQS. For these reasons, EPA's 1982 approval of this rule into the Kentucky SIP was in error.

EPA is therefore removing the rule from the approved SIP under the authority of section 110(k)(6) of the CAA. EPA is doing so, because it has determined that this rule is not related to the attainment and maintenance of the NAAQS. This Kentucky rule applies to emissions of potentially hazardous matters or toxic substances, *if* such emissions are not *elsewhere* subject to regulation by KDAQ (formerly Division of Air Pollution). However, KDAQ *elsewhere* regulates emissions of pollutants to attain and maintain the NAAQS. For example 401 KAR Chapters 51 and 53 regulate emissions of criteria pollutants, and emissions affecting criteria pollutants such as precursors. Because other KDAQ uses other regulations to regulate emissions of criteria pollutants to attain and maintain the NAAQS, and because KDAQ has confirmed that 401 KAR 63:020 "has never been used by the Cabinet to regulate emissions of any of the six criteria pollutants in any way that is related to the attainment and maintenance of the NAAQS . . . Nor have any reduction credits ever been claimed under this regulation," (March 31st letter), EPA has concluded that 401 KAR 63:020 does *not* apply to emissions relevant to the attainment and maintenance of the NAAQS. As stated above, under Section 110 of the CAA, SIPs should contain provisions relevant to attaining and maintaining the NAAQS. Kentucky rule 401 KAR 63:020 is not relevant to attaining and maintaining the NAAQS and was erroneously included in the SIP.

Section 110(k)(6) provides a process for EPA to correct such errors. Specifically, it provides that: "[w]henver the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation, revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof

shall be provided to the State and public." As stated above, EPA previously has relied on Section 110(k)(6) of the CAA to remove provisions that were erroneously incorporated from SIPs.

On October 29, 2007 (72 FR 61087), EPA proposed to remove 401 KAR 63:020 from the approved SIP under the authority of section 110(k)(6) of the CAA. EPA subsequently received comments from one commenter who opposed the proposed correction. In this action, EPA is addressing the adverse comments received and taking final action as described in Section I and Section IV for this rulemaking.

### III. Response to Comments

On May 25, 2007, the Commonwealth of Kentucky, through KDAQ, requested that EPA correct the Kentucky SIP to remove 401 KAR 63:020. In an action published on October 31, 2007 (72 FR 61589), EPA proposed to correct the Kentucky SIP through removal of 401 KAR 63:020 from the Kentucky SIP. EPA received comments from one commenter on the October 31, 2007, proposal. The comments are summarized below with EPA responses. EPA is now taking final action under Section 110(k)(6) to remove 401 KAR 63:020 from the Kentucky SIP.

*Comment:* The commenter states that 401 KAR 63:020 is not limited in scope to antimony, bismuth, lead, silica, tin and compounds of such materials, but is a narrative backstop regulation broadly applicable to any matter emitted in such quantity to be potentially hazardous. The regulation, the commenter continues, "is applicable to the six criteria pollutants in those instances where the emission of those pollutants is not otherwise addressed by regulation, such as instances where such emissions \* \* \* come from a source which is classified as "minor" but has significant localized impacts."

*Response:* Pursuant to Section 110 of the CAA, SIPs contain measures used by states to attain and maintain the NAAQS for the six criteria pollutants. Air toxics, on the other hand, are regulated pursuant to other parts of the CAA, including Section 112. The Kentucky rule, by its terms, applies to emissions of hazardous air pollutants, *not elsewhere regulated* by Kentucky. The applicability provision for 401 KAR 63:020, Section 1, states that the rule applies "to each affected facility which emits or may emit potentially hazardous matter or toxic substances as defined in Section 2 of this administrative regulation, provided such emissions *are not elsewhere subject to the provisions of the administrative regulations of the*

*Division for Air Quality.*" 401 KAR 63:020 Section 1 (emphasis added). KDAQ *elsewhere* regulates emissions of pollutants to attain and maintain the NAAQS and KDAQ has confirmed that it has never used 401 KAR 63:020 to regulate criteria pollutants in any way related to attaining or maintaining the NAAQS. Examples of other rules used by KDAQ to regulate emissions relevant to attainment and maintenance of the NAAQS include 401 KAR Chapters 51 and 53, regulating emissions of criteria pollutants and emissions affecting criteria pollutants such as precursors. Kentucky's rules also include various provisions regarding minor sources, such as 401 KAR 52:040. Therefore, by its terms, 401 KAR 63:020, does *not* apply to emissions relevant to the attainment and maintenance of the NAAQS.

As was explained above, the purpose of SIP-approved rules, consistent with section 110 of the CAA, is to implement a program to attain and maintain the NAAQS. The rule, 401 KAR 63:020, is not directed at attainment or maintenance of any NAAQS. Kentucky uses other rules to regulate criteria pollutants to attain and maintain the NAAQS, and KDAQ has confirmed that it has never used 401 KAR 63:020 to regulate criteria pollutants in any way related to attaining and maintaining the NAAQS. Thus, the commenter's statement that 63:020 "is broadly applicable to any matter emitted in such quantity to be potentially hazardous" does not consider the language in the Kentucky rule which limits its applicability to such emissions that "*are not elsewhere subject to the provisions of the administrative regulations of the Division for Air Quality.*" 401 KAR 63:020 Section 1.

The March 31, 2008, and June 15, 2009, letters, and other information provided by KDAQ to EPA responding to comments raised in response to EPA's October 29, 2007, proposal to remove 401 KAR 63:020 from the SIP are available in the docket for the current final action. This information is consistent with KDAQ's position in submitting the May 25, 2007, SIP revision requesting that the rule be removed. In its letters, KDAQ confirmed that this rule has never been used "to regulate the emissions of any of the six criteria pollutants in any way that is related to the attainment and maintenance of the NAAQS" under Section 110 of the CAA.

It should also be noted that EPA's current action does not affect the enforceability or applicability of the rule as a matter of state law. Nothing in today's action in any way alters the

status of 401 KAR 63:020 as a Kentucky law or Kentucky's ability to use the rule impose requirements into enforceable permits for sources to which the rule applies.

*Comment:* The commenter states that this regulation has been utilized in many instances during the years it has been part of the SIP, as a risk-based screening tool and that it has been the authority under which the state has required modeling of pollutants and imposed permit conditions for such emissions, including volatile organic compounds that are both potential air toxics and are criteria pollutant ozone precursors. The commenter further states that the regulation has been utilized to require further reductions beyond those categorically applicable to emissions, including criteria pollutant emissions.

*Response:* In its March 31, 2008, letter and repeated in its June 15, 2009, letter, KDAQ explained that 63:020 has been used as a risk-based screening tool for *toxic air emissions*, and "to the extent that a particular emission is both an air toxic and a criteria pollutant," the application of this rule "has only been concerned with the toxic impacts of the pollutant." (March 31st letter). In addition, as stated above, Kentucky explained that it "has never used this regulation to regulate criteria pollutants in any way that is related to the attainment and maintenance of NAAQS; and "never claimed any NAAQS reduction credits under this regulation." (March 31st letter; June 15th letter).

This statement by KDAQ confirms its historical usage of the rule as separate from regulation of criteria pollutants for the purpose of attaining and maintaining the NAAQS, and supports KDAQ's intent in submitting the May 25, 2007, SIP submission. This statement explains that 401 KAR 63:020 was erroneously incorporated into the SIP because it does not relate to the implementation, maintenance, and enforcement of the NAAQS in Kentucky.

EPA is reasonable in relying on information provided by KDAQ about the use of its rule, and has relied on similar information from other states to delete erroneously incorporated provisions from SIPs. See *e.g.*, 71 FR 13551 (EPA relied on information provided by Georgia in deleting a nuisance rule from Georgia SIP); 63 FR 27492 and 64 FR 7790 (EPA relied on information provided by Michigan in deleting a rule used to address odors and nuisances from Michigan SIP).

*Comment:* The commenter states that Kentucky has previously proposed to

repeal this regulation and replace it with a "safety net" regulation.

*Response:* Kentucky's authority over its administrative rules is separate from EPA's SIP process and is not relevant to this rulemaking. The current action will have no effect on the status of 401 KAR 63:020 as a rule as a matter of the law of the Commonwealth of Kentucky.

*Comment:* The commenter states that the removal of this rule is not authorized under 110(k)(6) because this rule is related to attainment and maintenance of the SIP since it has been the regulatory mechanism for requiring reductions of emissions of criteria pollutants. By removing this rule from the SIP, EPA is removing a regulatory tool that Kentucky has utilized to control criteria pollutants. The commenter also requests that EPA withdraw the proposed rule and request documentation from Kentucky of all instances in which emissions, operating conditions, or limits have been imposed and where applicants have accepted such limits to avoid imposition of conditions arising from the application of this rule. The commenter argues that if the application of 401 KAR 63:020 has resulted in control of criteria pollutants from major or area sources, then unless the Commonwealth submits a formal SIP revision providing offsetting reductions and demonstrates that removal of this regulation will not result in or interfere with continued maintenance and achievement of such reductions, the removal of 401 KAR 63:020 is inappropriate and cannot be undertaken by EPA.

*Response:* KDAQ's March 31, 2008, and June 15, 2009, letters to EPA confirmed that 401 KAR 63:020 has never been used by KDAQ to regulate the emissions of the six criteria pollutants in any way that is related to attainment and maintenance of the NAAQS. EPA is also not aware of any such use by Kentucky.

#### IV. Final Action

EPA is now taking final action to remove Kentucky rule 401 KAR 63:020 from the Kentucky SIP pursuant to section 110(k)(6) of the CAA.

#### 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 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 March 16, 2010. 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: January 4, 2010.

**Beverly H. Banister,**

*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 under Chapter 63—General Standards of Performance by removing the entry for “401 KAR 63:020” “Potentially hazardous matter or toxic substances”.

[FR Doc. 2010-587 Filed 1-14-10; 8:45 am]

**BILLING CODE 6560-50-P**