



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R04-OAR-2010-1014; FRL-9734-4]

#### Approval and Promulgation of Implementation Plans; Kentucky 110(a)(1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve in part, and conditionally approve in part, the State Implementation Plan (SIP) revisions, submitted by the Commonwealth of Kentucky through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), as demonstrating that the Commonwealth meets certain requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. The Commonwealth certified that the Kentucky SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS are implemented, enforced, and maintained in the Commonwealth (hereafter referred to as “infrastructure submission”). With the exception of elements 110(a)(2)(C), 110(a)(2)(D)(i), 110(a)(2)(E)(ii) and 110(a)(2)(J), EPA is today finalizing its determination that Kentucky’s infrastructure submissions, provided to EPA on August 26, 2008, and July 17, 2012, addressed all the required infrastructure elements for the

1997 annual and 2006 24-hour PM<sub>2</sub> NAAQS. In addition, EPA is today taking final action to approve Kentucky's July 17, 2012, submittal addressing the requirements of section 128 of the CAA. Final approval of these substantive revisions to the Kentucky SIP also enables EPA to take final action today approving the Commonwealth's infrastructure SIP as meeting the state board requirements of section 110(a)(2)(E)(ii). Lastly, EPA is taking final action to conditionally approve elements 110(a)(2)(C) and (J) of Kentucky's 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS infrastructure SIP.

**DATES:** This rule is effective [insert 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-1014. All documents in the docket are listed on the [www.regulations.gov](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 [www.regulations.gov](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:** Sean Lakeman, 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) 562-9043. Mr. Lakeman can be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 38652), EPA promulgated a new annual PM<sub>2.5</sub> NAAQS and on October 17, 2006 (71 FR

61144), EPA promulgated a new 24-hour NAAQS. On August 3, 2012, EPA proposed to approve in part, and conditionally approve in part, Kentucky's August 26, 2008, and July 17, 2012, infrastructure submissions for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. *See* 77 FR 46352. A summary of the background for today's final action is provided below. *See* EPA's August 3, 2012, proposed rulemaking at 77 FR 46352 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The

requirements that are the subject of this final rulemaking are listed below<sup>1</sup> and in EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards.” and September 25, 2009, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards.”

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.<sup>2</sup>
- 110(a)(2)(D): Interstate transport.<sup>3</sup>
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.<sup>4</sup>

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<sup>1</sup> Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today’s final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment plan requirements of section 110(a)(2)(C).

<sup>2</sup> This rulemaking only addresses requirements for this element as they relate to attainment areas.

<sup>3</sup> Today’s final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

## **II. This Action**

Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. The Commonwealth certified that the Kentucky SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS are implemented, enforced, and maintained in the Commonwealth.

Today, EPA is taking final action on three actions related to Kentucky’s section 110(a) obligations associated with the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. First, EPA has determined that, as described in its infrastructure submissions, Kentucky’s SIP meets the section 110(a)(2) infrastructure requirements for both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS with the exception of elements 110(a)(2)(C) respecting prevention of significant deterioration (PSD) requirements, 110(a)(2)(D)(i) regarding interstate transport, and 110(a)(2)(J) respecting PSD requirements. Second, EPA is approving Kentucky’s July 17, 2012, submission requesting approval of Kentucky Revised Statutes (KRS) Chapters 11A.020, 11A.030, 11A.040, 224.10-

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<sup>4</sup> This requirement was inadvertently omitted from EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards,” but as mentioned above is not relevant to today’s final rulemaking.

020 and 224.10-100 into the SIP to address element 110(a)(2)(E)(ii), related to state board requirements. Third, with respect to elements 110(a)(2)(C) and 110(a)(2)(J) as they both relate to PSD requirements, EPA is finalizing a conditional approval for these elements. On July 3, 2012, the Commonwealth submitted a commitment letter to EPA requesting conditional approval of outstanding requirements related to sections 110(a)(2)(C) and 110(a)(2)(J). In this letter, Kentucky provided a schedule on how the Commonwealth will address outstanding requirements promulgated in the New Source Review (NSR) PM<sub>2.5</sub> Rule related to the PM<sub>2.5</sub> standard for their PSD program and committing to providing the necessary SIP revision to address these NSR PM<sub>2.5</sub> Rule requirements. This letter of commitment meets the requirements of section 110(k)(4) of the CAA. See EPA's August 3, 2012, proposed rulemaking at 77 FR 46352 for more detail. If the Commonwealth fails to submit these revisions by October 3, 2013, today's conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal Implementation Plan requirement under section 110(c). However, if the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal.

Kentucky's infrastructure submissions, provided to EPA on August 26, 2008, and July 17, 2012, and the July 3, 2012, letter of commitment address all the required infrastructure elements for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS with the exception of element 110(a)(D)(i). For those infrastructure elements for which EPA is today finalize approval, the Agency has determined that the Commonwealth's August 26, 2008, and July 17, 2012, submissions are consistent with section 110 of the CAA.

EPA received one off-topic comment on its August 3, 2012, proposed rulemaking to approve Kentucky's August 26, 2008, and July 17, 2012, infrastructure submissions as meeting the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS.

The comment was focused on the promulgation of the particulate matter NAAQS, and not the current rulemaking action. The Commenter stated that EPA PM<sub>2.5</sub> standard forces expensive mandates on states and industry and the designation process places a strain on local resources and discourages economic growth and EPA should withdraw the PM<sub>2.5</sub> standard. Also, the Commenter stated that EPA should consider public interest prior to entering into consent decrees.

This comment does not appear to be related to the issues presented in the proposed rulemaking – and instead, related to a wholly separate topic, promulgation of the PM NAAQS. The Commenter did not provide comments relevant to EPA's August 3, 2012, proposed approval of Kentucky's infrastructure submissions for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. Instead, the Commenter appears to be providing comment on EPA's promulgation of PM NAAQS. Promulgations of NAAQS involve public comment opportunities and that would be the time to raise concerns specific to a particular NAAQS. Additionally, with regard to Commenter's general statement about consent decrees, although it is not clear to which specific consent decree commenter is referring, the CAA does provide for opportunities for public input regarding certain consent decrees.

EPA does not interpret these comments as relevant to the topic of EPA's proposed action on August 3, 2012, which is proposed approval, in part, and conditional approval, in part, of Kentucky's infrastructure submissions for the existing 1997 annual and 2006 24-hour PM<sub>2.5</sub>

NAAQS. Instead, EPA interprets these comments to be off-topic and outside of the scope of today's final rulemaking.

Kentucky's infrastructure submissions, provided to EPA on August 26, 2008, and July 17, 2012, and the July 3, 2012, letter of commitment address all the required infrastructure elements for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS with the exception of element 110(a)(D)(i). For those infrastructure elements for which EPA is today finalize approval, the Agency has determined that the Commonwealth's August 26, 2008, and July 17, 2012, submissions are consistent with section 110 of the CAA.

### **III. Final Action**

As already described, Kentucky has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS are implemented, enforced, and maintained in the Commonwealth with the exception of the elements noted above. EPA is taking final action to approve in part, and conditionally approve in part, Kentucky's August 26, 2008, and July 17, 2012, submissions for 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS because these submissions are consistent with section 110 of the CAA. These actions are not approving any specific rule, but rather making a determination that Kentucky's already approved SIP meets certain CAA requirements.

In addition, EPA is also taking final action to approve KRS Chapters 11A.020, 11A.030, 11A.040, 224.020 and 224.10-100 in the SIP.

### **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 Commonwealth 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 (Public Law 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, 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 [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

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

Dated: September 13, 2012.

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. Section 52.919 is revised to read as follows:

**§ 52.919 Identification of plan-conditional approval.**

Kentucky submitted a letter to EPA on July 3, 2012, which includes a commitment to address the State Implementation Plan deficiencies regarding requirements of Clean Air Act sections 110(a)(2)(C) and 110(a)(2)(J) as they both relate to Prevention of Significant Deterioration (PSD) infrastructure requirements for the 1997 annual and 2006 24-hour fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards. EPA is conditionally approving Kentucky's schedule to address outstanding requirements promulgated in the New Source Review (NSR) PM<sub>2.5</sub> Rule related to the PM<sub>2.5</sub> standard for their PSD program and committing to providing the necessary SIP revision to address these NSR PM<sub>2.5</sub> Rule requirements. If the Commonwealth fails to submit these revisions by October 3, 2013, the conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval.

3. Section 52.920 is amended by:

a. In paragraph (c), adding in numerical order a new entry for “Kentucky Revised Statutes (KRS)” at the end of the table 1 to read as follows:

b. In paragraph (e), adding two new entries for “110(a)(1) and (2) Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards” and “110(a)(1) and (2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards” at the end of the table 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>Kentucky Revised Statutes (KRS)</b> |   |                      |  |              |
| KRS Chapter 11A.020                    | Public servant prohibited from certain conduct-Exception-Disclosure of personal or private interest | 7/15/1998            | [Insert date of publication in <u>Federal Register</u> ]<br>[Insert citation of publication] |              |
| KRS Chapter 11A.030                    | Considerations in determination to abstain from action on official decision-Advisory opinion        | 7/14/1992            | [Insert date of publication in <u>Federal Register</u> ]<br>[Insert citation of publication] |              |
| KRS Chapter 11A.040                    | Acts prohibited for public servant or officer-exception   | 7/16/2006            | [Insert date of publication in <u>Federal</u>  |              |

|                        |   |           |  |  |
|------------------------|---|-----------|--|--|
|                        |   |           | <u>Register</u><br>[Insert citation of publication]  |  |
| KRS Chapter 224.10-020 | Department within the cabinet-Offices and divisions within the departments-Appointments | 7/15/2010 | [Insert date of publication in <u>Federal Register</u> ]<br>[Insert citation of publication] |  |
| KRS Chapter 224.10-100 | Powers and duties of cabinet  | 8/30/2007 | [Insert date of publication in <u>Federal Register</u> ]<br>[Insert citation of publication] |  |

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(e) \* \* \*

#### EPA-Approved Kentucky Non-regulatory Provisions

| Name of non-regulatory SIP provision  | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approval date  | Explanations   |
|---|---|-------------------------------------|--|--|
| **  | **  | *                                   | *  | *  |
| 110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air | Kentucky                                    | 8/26/2008                           | [Insert date of publication in <u>Federal Register</u> ]<br>[Insert citation of publication] | With the exception of section 110(a)(2)(D)(i), With respect to sections 110(a)(2)(C) related to PSD requirements and 110(a)(2)(J) related to PSD requirements, |

|   |          |           |  |  |
|---|----------|-----------|--|--|
| Quality Standards   |          |           |  | EPA conditionally approved these requirements.   |
| 110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards | Kentucky | 7/17/2012 | [Insert date of publication in <u>Federal Register</u> ]<br>[Insert citation of publication] | With the exception of section 110(a)(2)(D)(i), With respect to sections 110(a)(2)(C) related to PSD requirements and 110(a)(2)(J) related to PSD requirements, EPA conditionally approved these requirements |

**[FR Doc. 2012-23988 Filed 10/02/2012 at 8:45 am; Publication Date: 10/03/2012]**