



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R04-OAR-2012-0773; FRL-9960-55-Region 4]

Air Plan Approval and Air Quality Designation; KY; Redesignation of the Kentucky Portion of the Louisville 1997 Annual PM_{2.5} Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 5, 2012, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality, submitted a request for the Environmental Protection Agency (EPA) to redesignate the portion of Kentucky that is within the bi-state Louisville, KY-IN fine particulate matter (PM_{2.5}) nonattainment area (hereinafter referred to as the “bi-state Louisville Area” or “Area”) to attainment for the 1997 Annual PM_{2.5} national ambient air quality standards (NAAQS) and to approve a state implementation plan (SIP) revision containing a maintenance plan for the Area. EPA is taking final action to approve the Commonwealth’s plan for maintaining the 1997 Annual PM_{2.5} NAAQS in the Area, including the motor vehicle emission budgets (MVEBs) for nitrogen oxide (NO_x) and PM_{2.5} for the years 2015 and 2025 for the bi-state Louisville Area, and incorporate it into the SIP, and to redesignate the Kentucky portion of the Area to attainment for the 1997 Annual PM_{2.5} NAAQS. Additionally, EPA finds the 2025 MVEBs for the bi-state Louisville Area adequate for the purposes of transportation conformity.

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

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0773. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be 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 or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation 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 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez of the Air Regulatory Management Section, in the Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Madolyn Sanchez may be reached by phone at (404) 562-9644, or via electronic mail at sanchez.madolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What is the Background for the Actions?

On July 18, 1997, EPA promulgated the first air quality standards for PM_{2.5}. EPA promulgated an annual standard at a level of 15.0 micrograms per cubic meter (µg/m³), based on a 3-year average of annual mean PM_{2.5} concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 µg/m³, based on a 3-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006 (71 FR 61144), EPA retained the annual average NAAQS at 15.0 µg/m³ but revised the 24-hour NAAQS to 35 µg/m³, based again on the 3-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005 (70 FR 944), and supplemented on April 14, 2005 (70 FR 19844), EPA designated the bi-state Louisville Area as nonattainment for the Annual 1997 PM_{2.5} NAAQS. The bi-state Louisville Area consists of Bullitt and Jefferson Counties in Kentucky as well as Clark and Floyd Counties and a portion of Jefferson County (Madison Township) in Indiana.¹ On November 13, 2009 (74 FR 58688), EPA promulgated designations for the 24-hour PM_{2.5} standard established in 2006, designating the bi-state Louisville Area as attainment for that NAAQS. That action clarified that the bi-state Louisville Area was classified unclassifiable/attainment for the 24-hour NAAQS promulgated in 1997. EPA did not promulgate designations for the 2006 Annual PM_{2.5} NAAQS since that NAAQS was essentially identical to the 1997 Annual PM_{2.5} NAAQS.

On March 5, 2012, Kentucky submitted a request to EPA for redesignation of the Kentucky portion of the bi-state Louisville Area to attainment for the 1997 Annual PM_{2.5}

¹ In a separate submittal, EPA received the redesignation request and maintenance plan for the Indiana portion of this Area. On September 9, 2016, EPA took final action to determine that the entire bi-state Louisville Area has attained the 1997 PM_{2.5} standard and to approve Indiana's redesignation request and maintenance plan. *See* 81 FR 62390.

NAAQS and a related SIP revision containing a maintenance plan for the Area. In a notice of proposed rulemaking (NPRM) published on January 11, 2017 (82 FR 3234), EPA proposed to approve the Commonwealth's 1997 Annual PM_{2.5} NAAQS maintenance plan, including the 2025 MVEBs for NO_x and direct PM_{2.5}, for the Kentucky portion of the bi-state Louisville Area and incorporate the maintenance plan into the SIP, and to redesignate the Kentucky portion of the bi-state Louisville Area to attainment for the 1997 Annual PM_{2.5} NAAQS. In that notice, EPA also notified the public of the status of the Agency's adequacy determination for the NO_x and direct PM_{2.5} MVEBs for the Area. No adverse comments were received on the January 11, 2017, proposed rulemaking. The details of Kentucky's submittal and the rationale for EPA's actions are further explained in the NPRM.

II. What are the Effect of these Actions?

Approval of the redesignation request changes the legal designation of the counties in the Kentucky portion of the bi-state Louisville Area, found at 40 CFR 81.318, from nonattainment to attainment for the 1997 Annual PM_{2.5} NAAQS. Approval of Kentucky's associated SIP revision also incorporates a plan into the SIP for maintaining the 1997 Annual PM_{2.5} NAAQS in the Kentucky portion of the bi-state Louisville Area as described in the NPRM. The maintenance plan also establishes NO_x and direct PM_{2.5} MVEBs for 2025 for the Area and includes contingency measures to remedy any future violations of the 1997 Annual PM_{2.5} NAAQS and procedures for evaluation of potential violations. The 2025 NO_x and PM_{2.5} MVEBs are 9,311.76 tons per year (tpy) and 324.04 tpy, respectively, for the Area.

In the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements final rule (final PM_{2.5} SIP requirements rule), EPA revoked

the 1997 primary annual PM_{2.5} NAAQS in areas that had always been attainment for that NAAQS, and in areas that had been designated as nonattainment but that were redesignated to attainment before October 24, 2016, the rule's effective date. *See* 81 FR 58010 (August 24, 2016). EPA also finalized a provision that revokes the 1997 primary annual PM_{2.5} NAAQS in areas that are redesignated to attainment for that NAAQS after October 24, 2016, effective on the effective date of the redesignation of the area to attainment for that NAAQS. *See* 40 CFR 50.13(d).

EPA is finalizing the redesignation of the Kentucky portion of the bi-state Louisville Area to attainment for the 1997 annual PM_{2.5} NAAQS and finalizing the approval of the CAA section 175A maintenance plan for the 1997 primary annual PM_{2.5} NAAQS.² The 1997 primary annual PM_{2.5} NAAQS will be revoked in the bi-state Louisville Area on the effective date of this redesignation, [FEDERAL REGISTER OFFICE: insert date of publication of this document in the Federal Register]. Beginning on that date, the Area will no longer be subject to transportation or general conformity requirements for the 1997 annual PM_{2.5} NAAQS due to the revocation of the primary NAAQS. *See* 81 FR 58125 (August 24, 2016). The Area is required to implement the CAA section 175A maintenance plan for the 1997 primary annual PM_{2.5} NAAQS that is being approved in today's action and the prevention of significant deterioration program for the 1997 annual PM_{2.5} NAAQS. The approved maintenance plan can only be revised if the revision meets the requirements of CAA section 110(l) and, if applicable, CAA

² CAA section 175A(a) establishes the maintenance plan requirements that must be fulfilled by nonattainment areas in order to be redesignated to attainment. That section only requires that nonattainment areas for the *primary* standard submit a plan addressing maintenance of the *primary* NAAQS in order to be redesignated to attainment; it does not require nonattainment areas for secondary NAAQS to submit maintenance plans in order to be redesignated to attainment. *See* 42 U.S.C. 7505a(a).

section 193. The Area is not required to submit a second 10-year maintenance plan for the 1997 primary annual PM_{2.5} NAAQS. *See* 81 FR 58144 (August 24, 2016).

III. Final Actions

EPA is taking two separate, but related, final actions regarding Kentucky's request to redesignate the Kentucky portion of the bi-state Louisville Area to attainment for the 1997 PM_{2.5} NAAQS and associated SIP revision. First, EPA is approving the maintenance plan for the bi-state Louisville Area, including the NO_x and direct PM_{2.5} MVEBs for 2025, and incorporating the maintenance plan into the Kentucky SIP. Second, EPA is approving Kentucky's redesignation request and redesignating the Kentucky portion of the Area from nonattainment to attainment for the 1997 Annual PM_{2.5} NAAQS. As mentioned above, approval of the redesignation request changes the official designation of the counties in the Kentucky portion of the bi-state Louisville Area for the 1997 Annual PM_{2.5} NAAQS from nonattainment to attainment, as found at 40 CFR part 81. EPA is also notifying the public that EPA finds the newly-established NO_x and direct PM_{2.5} MVEBs for the bi-state Louisville Area adequate for the purpose of transportation conformity.

As mentioned above, EPA's most recently promulgated PM_{2.5} implementation rule provides that the 1997 PM_{2.5} NAAQS will be revoked for any area that is redesignated for the NAAQS upon the effective date of the redesignation. Therefore, the 1997 primary annual PM_{2.5} NAAQS is revoked for the Kentucky portion of the bi-state Louisville Area on the effective date of this redesignation.

In accordance with 5 U.S.C. 553(d), EPA finds that there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is

unnecessary due to the nature of a redesignation to attainment, which relieves the Area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking action may become effective less than 30 days after publication if the rule grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule will serve as a basis for a subsequent action to relieve the Area from certain CAA requirements. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 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, these actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these actions:

- are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are 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.*);
- do 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);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are 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

- will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

Dated: March 15, 2017.

V. Anne Heard

Acting Regional Administrator,
Region 4.

40 CFR parts 52 and 81 are amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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 52.920(e) is amended by adding an entry for “1997 Annual PM_{2.5} Maintenance Plan for the Kentucky portion of the bi-state Louisville Area” at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(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
**	**	**	*	
1997 Annual PM _{2.5} Maintenance Plan for the Kentucky portion of the bi-state Louisville Area	Bullitt and Jefferson Counties	3/5/2012	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	

PART 81-DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

3. The authority citation for part 81 continues to read as follows:

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

4. In § 81.318, the table entitled “Kentucky-1997 Annual PM_{2.5} NAAQS (Primary and

secondary)” is amended under “Louisville, KY-IN:” by revising the entries for “Bullitt County” and “Jefferson County” to read as follows:

§ 81.318 Kentucky.

* * * * *

Kentucky-1997 Annual PM_{2.5} NAAQS
(Primary and secondary)

Designated area	Designation ^a		Classification	
	Date ¹	Type	Date ²	Type
**	**	*	*	*
Louisville, KY-IN:				
Bullitt County	[Insert date of publication in the Federal Register]	Attainment		
Jefferson County	[Insert date of publication in the Federal Register]	Attainment		
**	**	*	*	*

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is 90 days after January 5, 2005, unless otherwise noted.

² This date is July 2, 2014, unless otherwise noted.

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[FR Doc. 2017-06900 Filed: 4/6/2017 8:45 am; Publication Date: 4/7/2017]