



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0048; FRL-9960-54-Region 4]

Air Plan Approval; Kentucky; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the portion of the State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet's Division of Air Quality on August 26, 2016, regarding the nonattainment new source review (NNSR) requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS) for the Kentucky portion of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana 2008 8-hour ozone nonattainment area (hereinafter referred to as the "Cincinnati-Hamilton, OH-KY-IN Area" or "Area"). The Area consists of Butler, Clermont, Clinton, Hamilton, and Warren Counties in Ohio; portions of Boone, Campbell, Kenton Counties in Kentucky; and a portion of Dearborn County in Indiana. This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: This direct final rule is effective **[Insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse comment by **[Insert date 30 days after date of publication in the Federal Register]**. If EPA receives such comments, it

will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0048 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Andres Febres of 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. Mr. Febres can be reached via telephone at (404) 562-8966 or via electronic mail at febres-martinez.andres@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. As part of the designations process for the 2008 8-hour ozone NAAQS, the Cincinnati-Hamilton, OH-KY-IN Area was designated as a marginal ozone nonattainment area, effective July 20, 2012. *See* 77 FR 30088 (May 21, 2012). On March 6, 2015, EPA issued a final rule entitled, "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (SIP Requirements Rule), which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for

areas where air quality exceeds the 2008 8-hour ozone NAAQS.¹ *See* 80 FR 12264. Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015 (3 years after the effective date of designation).² *See* 40 CFR 51.1103.

Based on the nonattainment designation for the 2008 8-hour ozone standard, Kentucky was required to develop a SIP revision addressing certain CAA requirements for the Kentucky portion of the Area. On August 26, 2016, the Commonwealth of Kentucky submitted a SIP revision addressing, among other things, NNSR requirements for the 2008 8-hour ozone NAAQS for the Kentucky Area. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS is provided below.

II. Analysis of Kentucky's Nonattainment New Source Review Requirements

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. *See* 40 CFR 51.1114. These NNSR program requirements include those promulgated in the "Phase 2 Rule" implementing the 1997 8-hour ozone NAAQS (70 FR 71612) and the SIP Requirements Rule for implementing the 2008 8-hour ozone NAAQS (80 FR 12264). Under the Phase 2 Rule, the SIP for each ozone nonattainment

¹ The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The Rule also revokes the 1997 8-hour ozone NAAQS and establishes anti-backsliding requirements.

² On May 4, 2016 (81 FR 26697), EPA published its determination that the Area had attained the 2008 8-hour ozone NAAQS by the attainment deadline. However, an attainment determination is not equivalent to a redesignation under CAA section 107(d)(3). The Area will remain nonattainment for the 2008 8-hour ozone NAAQS and subject to the NNSR requirements for that NAAQS until such time as EPA determines that the Area meets the requirements for redesignation to attainment.

area must contain nonattainment NSR provisions that: set major source thresholds for nitrogen oxides (NO_x) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)-(iv) and (a)(1)(iv)(A)(2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO_x as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NO_x as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)-(C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1) and (2); provide that the requirements applicable to VOC also apply to NO_x pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO_x pursuant to 40 CFR 51.165(a)(9)(i)-(iii) (renumbered as (a)(9)(ii)-(iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 8-hour ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105. *See* 40 CFR 51.165(a)(12).

Kentucky has a longstanding and fully implemented NNSR program (found at 401 Kentucky Administrative Regulation (KAR) 51:052) that establishes air quality permitting requirements for the construction or modification of major stationary sources located within, or impacting, areas designated as nonattainment. EPA last approved revisions to the SIP-approved

version of Kentucky's NNSR rule on September 15, 2010. Those revisions, submitted to EPA in a February 5, 2010 SIP revision, addressed the NNSR requirements in the Phase 2 Rule for the 1997 8-hour ozone NAAQS. In approving the revisions to Kentucky's NNSR rule, EPA found the revisions to be in accordance with the changes in the federal NSR program for the 1997 8-hour ozone NAAQS.³ *See* 75 FR 55988. In Kentucky's August 26, 2016 SIP revision, the Commonwealth states that its NNSR program is applicable to the 2008 8-hour ozone NAAQS and cites to the program as containing acceptable provisions to provide for new source review in the Kentucky portion of the Area.

The version of 401 KAR 52:052 that is contained in the current SIP has not changed since the 2010 rulemaking. This version of the rule covers the Kentucky portion of the Area and is adequate to meet all applicable NNSR requirements for the 2008 8-hour ozone NAAQS. The Phase 2 requirements for 8-hour ozone nonattainment areas classified as serious or above remain inapplicable because the Area is classified as a marginal nonattainment area for the 2008 8-hour NAAQS, and the anti-backsliding requirements added in the SIP Requirements Rule for implementing the 2008 8-hour ozone NAAQS are inapplicable because the Kentucky portion of the Area was redesignated to attainment for the 1997 8-hour ozone NAAQS in 2010.⁴ As stated above, the anti-backsliding requirements for NNSR in the SIP Requirements Rule only apply to

³ In that action, EPA determined that the SIP revision was consistent with changes to federal NSR requirements (40 CFR 51.165 and 51.166 and the Phase II Rule) relating to the incorporation of nitrogen oxides as an ozone precursor. *See* 75 FR 55988 (September 15, 2010).

⁴ *See* 75 FR 47218 (August 5, 2010). The 1997 8-hour ozone NAAQS was revoked with the 2008 8-hour ozone NAAQS SIP Requirements Rule, and as discussed above, the anti-backsliding requirements for the 1997 8-hour ozone NAAQS only apply for areas that were nonattainment for the 1997 standard on the effective date of the revocation (April 6, 2015). *See* 80 FR 12264 (March 6, 2015).

areas designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 8-hour ozone NAAQS on April 6, 2015.

III. Final Action

EPA is approving the portion of Kentucky's August 26, 2016, SIP revision addressing the NNSR requirements for the 2008 8-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN Area. EPA has concluded that the Commonwealth's submission fulfills the 40 CFR 51.1114 revision requirement and meets the requirements of CAA section 110 and the minimum SIP requirements of 40 CFR 51.165.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [Insert date 60 days after date of publication in the Federal Register] without further notice unless the Agency receives adverse comments by [Insert date 30 days after date of publication in the Federal Register].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [Insert date 60 days after date of publication in the Federal Register] and no further action will be taken on the proposed rule.

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. *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, 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

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 [Insert date 60 days after date of publication 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 15, 2017.

V. Anne Heard,
Acting Regional Administrator,
Region 4.

40 CFR part 52 is 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 “2008 8-hour ozone NAAQS

Nonattainment New Source Review Requirements for the Kentucky Portion of the Cincinnati-Hamilton OH-KY-IN Area” at the end of the table to read as follows:

§ 52.920 Identification of plan.

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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
**	**	*	*	*
2008 8-hour ozone NAAQS Nonattainment New Source Review Requirements for the Kentucky Portion of the Cincinnati-Hamilton OH-KY-IN Area	Boone, Campbell and Kenton Counties (part) (Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN Area)	8/26/2016	[Insert date of publication in <u>Federal Register</u>] [Insert Federal register citation]	

[FR Doc. 2017-07028 Filed: 4/7/2017 8:45 am; Publication Date: 4/10/2017]