



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2017-0361; FRL-9964-93-Region 4]**

**Air Plan Approval; KY;**

**Revisions to Ambient Air Quality Standards**

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

**ACTION:** Proposed rule.

**SUMMARY:** On September 9, 2016, the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), submitted a revision to the Kentucky State Implementation Plan (SIP). The Environmental Protection Agency (EPA) is proposing to approve changes to the Commonwealth's air quality standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone, particulate matter (both PM<sub>10</sub> and PM<sub>2.5</sub>), and sulfur dioxide (SO<sub>2</sub>) to reflect the historical and current National Ambient Air Quality Standards (NAAQS). EPA is proposing to approve this SIP revision because the Commonwealth has demonstrated that these change are consistent with the Clean Air Act (CAA or Act). KDAQ's submission also includes additional air quality standards for hydrogen sulfide, fluorides, and odor; however, EPA is not proposing to approve these state standards into the SIP.

**DATES:** Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-

0361 at <http://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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Madolyn Sanchez, 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. Ms. Sanchez can be reached via telephone at (404) 562-9644 or via electronic mail at [sanchez.madolyn@epa.gov](mailto:sanchez.madolyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS to protect public health and welfare. The CAA requires periodic review of the air quality criteria—the science upon which the standards are based—and the standards themselves. EPA’s regulatory provisions that govern the NAAQS are found at 40 CFR

50—*National Primary and Secondary Ambient Air Quality Standards*. In this rulemaking, EPA is proposing to approve changes in Kentucky’s September 9, 2016, submission amending the Commonwealth’s regulations for ambient air quality standards to reflect the historical and current NAAQS, which are found at 401 KAR 53:010. The revision also includes textual changes to language in the regulation to provide regulatory clarity, as well as updating and reformatting the Appendix A table of ambient air quality standards and Appendix A footnotes. The SIP submittal amending Kentucky’s regulations can be found in the docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov) and is summarized below.

## **II. EPA’s Analysis of Kentucky’s SIP Revisions**

The September 9, 2016, SIP submission revises Kentucky regulation 401 KAR 53:010 by updating the Commonwealth’s ambient air quality standards to reflect the historical and current NAAQS for CO, Pb, NO<sub>2</sub>, ozone, PM<sub>10</sub>, PM<sub>2.5</sub>, and SO<sub>2</sub>; modifying language in the regulation to provide regulatory clarity; and updating and reformatting the Appendix A ambient air quality standards table and Appendix A footnotes. The updates to the air quality standards are discussed in further detail below.

### **a. CO**

On September 13, 1985, EPA revoked the 1-hour and 8-hour secondary NAAQS for CO. *See* 50 FR 37484. Accordingly, in the September 9, 2016, SIP submission, Kentucky revised regulation 401 KAR 53:010 to update its air quality standards for CO to be consistent with the NAAQS promulgated by EPA in 1985.

### **b. Pb**

On November 12, 2008, EPA promulgated a new 1-hour primary and secondary

NAAQS for Pb at a level of 0.15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), based on a rolling 3-month average. *See* 73 FR 66964. Accordingly, in the September 9, 2016, SIP submission, Kentucky revised regulation 401 KAR 53:010 to update its air quality standards for Pb to be consistent with the NAAQS promulgated by EPA in 2008.

c. NO<sub>2</sub>

On February 9, 2010, EPA promulgated a new 1-hour primary NAAQS for NO<sub>2</sub> at a level of 100 parts per billion (ppb), based on a 3-year average of the 98<sup>th</sup> percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474. Accordingly, in the September 9, 2016, SIP submission, Kentucky revised regulation 401 KAR 53:010 to update its air quality standards for NO<sub>2</sub> to be consistent with the NAAQS promulgated by EPA in 2010.

d. Ozone

On July 18, 1997, EPA revoked the 1-hour primary and secondary NAAQS for ozone.<sup>1</sup> To replace the 1-hour primary and secondary NAAQS for ozone, EPA promulgated a new primary and secondary 8-hour NAAQS for ozone at a level of 0.08 parts per million (ppm), based on an annual fourth-highest maximum 8-hour concentration averaged over three years. *See* 62 FR 38856. On March 27, 2008, EPA promulgated a new 8-hour primary and secondary NAAQS for ozone at a level of 0.075 ppm, based on an annual fourth-highest maximum 8-hour concentration averaged over three years. *See* 73 FR 16483. On October 26, 2015, EPA

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<sup>1</sup>EPA revoked the 1-hour ozone standard in all areas in 2005. However, some areas have continuing obligations under the standard.

promulgated a new primary and secondary NAAQS for ozone at a level of 0.070 ppm, based on an annual fourth-highest maximum 8-hour concentration averaged over three years. *See* 80 FR 65292. At that same time, EPA revoked the 1997 8-hour primary and secondary NAAQS for ozone.<sup>2</sup> Accordingly, in the September 9, 2016, SIP submission, Kentucky revised regulation 401 KAR 53:010 to update its air quality standards for ozone to be consistent with the NAAQS promulgated by EPA in 1997, 2008, and 2015.

e. Particulate Matter (PM<sub>10</sub> and PM<sub>2.5</sub>)

On July 18, 1997, EPA promulgated a new 24-hour primary and secondary NAAQS for PM<sub>2.5</sub> at a level of 65 µg/m<sup>3</sup>, based on the 98<sup>th</sup> percentile of 24-hour PM<sub>2.5</sub> concentrations averaged over three years. EPA also promulgated a new annual primary and secondary NAAQS for PM<sub>2.5</sub> at a level of 15.0 µg/m<sup>3</sup>, based on the annual arithmetic mean averaged over three years. *See* 62 FR 38652. On October 17 2006, EPA revised the 24-hour primary and secondary PM<sub>2.5</sub> NAAQS to 35 µg/m<sup>3</sup>, based on the 98<sup>th</sup> percentile of 24-hour PM<sub>2.5</sub> concentrations averaged over three years. At that same time, EPA revoked the annual PM<sub>10</sub> NAAQS. *See* 71 FR 61144. On December 14, 2012, EPA revised the primary annual NAAQS for PM<sub>2.5</sub> at a level of 12 µg/m<sup>3</sup>, based on the annual arithmetic mean averaged over three years. *See* 78 FR 3085; January 15, 2013. Accordingly, in the September 9, 2016, SIP submission, Kentucky revised regulation 401 KAR 53:010 to update its air quality standards for PM<sub>10</sub> and PM<sub>2.5</sub> to be consistent with the NAAQS promulgated by EPA in 1997,

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<sup>2</sup> EPA revoked the 1997 8-hour ozone standard in 2015. However, some areas have continuing obligations under the standard.

2006, and 2012.

f. SO<sub>2</sub>

On June 22, 2010, EPA promulgated a revised primary SO<sub>2</sub> NAAQS to an hourly standard of 75 ppb, based on a 3-year average of the annual 99<sup>th</sup> percentile of 1-hour daily maximum concentration. At that same time, EPA revoked the 24-hour SO<sub>2</sub> NAAQS.<sup>3</sup> See 75 FR 35520. Accordingly, in the September 9, 2016, SIP submission, Kentucky revised regulation 401 KAR 53:010 to update its air quality standards for SO<sub>2</sub> to be consistent with the NAAQS promulgated by EPA in 2010.

### **III. Incorporation by Reference**

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Kentucky regulation 401 KAR 53:010 – *Ambient air quality standards*, effective July 19, 2016. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

### **IV. Proposed Action**

EPA is proposing to approve the Commonwealth of Kentucky September 9, 2016, SIP revision identified in section II above, because these changes are consistent with the CAA.

### **V. Statutory and Executive Order Reviews**

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<sup>3</sup> The 1971 sulfur dioxide standards remain in effect until one (1) year after an area is designated for the 2010 standard, except that in areas designated nonattainment for the 1971 standards, the 1971 standards remain in effect until implementation plans to attain or maintain the 2010 standards are approved, in accordance with 40 CFR part 52, subpart S.

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 proposed action merely proposes to approve 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.

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 29, 2017.

V. Anne Heard

Acting Regional Administrator,

Region 4.

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