



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2017-0361; FRL-9967-57-Region 4]**

**Air Plan Approval; KY;**

**Revisions to Ambient Air Quality Standards**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve the State Implementation Plan (SIP) submission submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), on September 9, 2016. The changes to the SIP that EPA is taking final action to approve pertain to 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 has determined that the September 9, 2016, SIP revision is consistent with the Clean Air Act (CAA or Act). KDAQ's submission also included additional air quality standards for hydrogen sulfide, fluorides, and odor; however, EPA is not approving these state standards into the SIP.

**DATES:** This rule will be 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-2017-0361. 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 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, 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 a proposed rulemaking published on July 17, 2017, EPA proposed to approve changes to the Commonwealth’s regulations for ambient air quality standards in the Kentucky SIP, submitted by the Commonwealth on September 9, 2016. *See* 82 FR 32671. The September 9, 2016, submission amends the Commonwealth’s regulations for ambient air quality standards 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 details of Kentucky’s submission and the rationale for EPA’s action are explained in the proposed rulemaking. Comments on the proposed rulemaking were due on or before August 16, 2017. EPA received no adverse comments on the proposed action.

## **II. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of 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).

Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s

approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>1</sup>

### **III. Final Action**

EPA is taking final action to approve the Commonwealth of Kentucky SIP revision submitted on September 9, 2016. The submission revises Kentucky regulation 401 KAR 53:010 to reflect changes to the Commonwealth's air quality standards for CO, Pb, NO<sub>2</sub>, ozone, both PM<sub>10</sub> and PM<sub>2.5</sub>, and SO<sub>2</sub> to reflect the historical and current NAAQS. 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.

### **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);

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

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

Dated: August 25, 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(c), Table 1 is amended under Chapter 53 by revising the entry for “401 KAR 53:010” to read as follows:

**§52.920 Identification of plan.**

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(c) \* \* \*

Table 1-EPA-Approved Kentucky Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
<b>Chapter 53 Ambient Air Quality</b>				
**	**	*	*	*
401 KAR 53:010	Ambient air quality standards	07/19/16	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
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[FR Doc. 2017-19212 Filed: 9/11/2017 8:45 am; Publication Date: 9/12/2017]