



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0799; FRL-9991-82-Region 4]

Air Plan Approval; Kentucky; Regional Haze Plan and Prong 4 (Visibility) for the 1997 Ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking four actions regarding the Kentucky State Implementation Plan (SIP). Specifically, EPA is approving Kentucky's November 16, 2018, SIP submittal seeking to change reliance from the Clean Air Interstate Rule (CAIR) to the Cross-State Air Pollution Rule (CSAPR) for certain regional haze requirements; converting EPA's limited approval/limited disapproval of Kentucky's regional haze SIP to a full approval; removing EPA's Federal Implementation Plan (FIP) for Kentucky which relied on CSAPR to address the deficiencies identified in the limited disapproval of Kentucky's regional haze SIP; and approving the visibility prong of Kentucky's infrastructure SIP submittals for the 1997 8-hour Ozone, 2010 Nitrogen Dioxide (NO₂), 2010 Sulfur Dioxide (SO₂), and 2012 Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS).

DATES: This rule will be effective [Insert date 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-2018-0799. All documents in the dockets 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: Michele Notarianni, 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. Notarianni can be reached by telephone at (404) 562-9031 or via electronic mail notarianni.michele@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 30, 2012, EPA finalized a limited approval and a limited disapproval of SIP revisions submitted by Kentucky on June 25, 2008, and May 28, 2010, addressing regional haze program requirements.¹ The limited disapproval of these SIP revisions was based upon, and limited to, the Commonwealth's reliance on CAIR as an alternative to best available retrofit technology (BART) for nitrogen oxide (NO_x) and SO₂ at certain electric generating units

¹ See 77 FR 19098.

(EGUs); as a measure for reasonable progress with respect to SO₂ emissions from these units during the first implementation period;² and as an element of a long-term strategy (LTS) for achieving its reasonable progress goals (RPGs).³ In the March 30, 2012, action, EPA determined that Kentucky's regional haze SIP revisions satisfied all other necessary elements for a fully approvable regional haze program, including BART for particulate matter (PM) at EGUs formerly subject to CAIR. On June 7, 2012, EPA finalized a FIP for Kentucky (hereinafter referred to as the "partial Regional Haze FIP") that replaced reliance on CAIR with reliance on CSAPR to meet NO_x and SO₂ BART for EGUs formerly subject to CAIR thereby addressing the deficiencies in the Commonwealth's CAIR-dependent regional haze SIP.⁴

On November 16, 2018, Kentucky submitted a SIP revision to change its reliance from CAIR to CSAPR for the purpose of meeting the NO_x and SO₂ BART requirements for EGUs formerly subject to CAIR; the reasonable progress requirements with respect to SO₂ emissions from these units; and the requirement that an LTS contain all measures necessary to achieve

² EPA approved Kentucky's determination in its regional haze SIP revisions to focus solely on evaluating SO₂ emissions from EGU and non-EGU point sources in its reasonable progress analysis for the first implementation period. See 77 FR 19098 (March 30, 2012). Kentucky based its determination on a sensitivity analysis from the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) regional planning organization demonstrating that sulfate particles resulting from SO₂ emissions are the dominant contributor to visibility impairment on the 20 percent worst days at all Class I areas in the VISTAS states, including Kentucky. For more information, see 76 FR 78194 (December 16, 2011).

³ EPA demonstrated that CAIR would achieve greater reasonable progress than BART in revisions to the regional haze program made in 2005. See 70 FR 39104 (July 6, 2005). In those revisions, EPA amended its regulations to provide that states participating in the CAIR cap-and-trade programs pursuant to an EPA-approved CAIR SIP or states that remain subject to a CAIR FIP need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO₂ and NO_x. As a result of EPA's determination that CAIR was "better-than-BART," a number of states in the CAIR region, including Kentucky, relied on the CAIR cap-and-trade programs as an alternative to BART for EGU emissions of SO₂ and NO_x in designing their regional haze plans. These states also relied on CAIR as an element of an LTS for achieving their reasonable progress goals (RPGs) for their regional haze programs. However, in 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to EPA without vacatur to preserve the environmental benefits provided by CAIR. *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and issued FIPs to implement the rule in CSAPR-subject states. CSAPR has now replaced the CAIR program. Kentucky is subject to the CSAPR annual NO_x, ozone-season NO_x, and SO₂ trading programs.

⁴ 77 FR 33642.

reasonable progress, thereby eliminating the Commonwealth's need for the partial Regional Haze FIP. Kentucky also submitted the SIP revision to satisfy its outstanding interstate visibility transport obligations under section 110(a)(2)(D)(i)(II) of the CAA (also known as "prong 4"). Thus, Kentucky is seeking EPA approval for its 1997 8-hour ozone infrastructure SIP (iSIP) submission (December 13, 2007); 2010 1-hour NO₂ and 2010 1-hour SO₂ iSIP submission (April 26, 2013); and annual PM_{2.5} iSIP submission (February 8, 2016).⁵

Prong 4 requires that a state's implementation plan include adequate provisions prohibiting any source or other type of emissions activity in one state from interfering with measures to protect visibility required to be included in another state's implementation plan. EPA's 2013 Guidance on Infrastructure SIP Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (2013 Guidance) provides that one way a state may demonstrate that its SIP will ensure that emissions from the state will not interfere with measures required to be in other states' plans to protect visibility (i.e., to satisfy prong 4) is through confirmation in its infrastructure SIP submission that it has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309.⁶ Kentucky's aforementioned iSIPs rely on the Commonwealth's regional haze SIP to satisfy prong 4 requirements; therefore, today's full approval of Kentucky's regional haze SIP allows for approval of the prong 4 elements in these iSIPs.

⁵ By statute, plans meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years (or less, if the Administrator so prescribes) after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions.

⁶ See EPA, Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2), at 33 (Sept. 13, 2013), *available at* https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf.

On February 15, 2019 (84 FR 4407), EPA published a notice of proposed rulemaking (NPRM) proposing to: 1) approve Kentucky's November 16, 2018, SIP submission to change reliance from CAIR to CSAPR in its regional haze SIP; 2) convert EPA's limited approval/limited disapproval of Kentucky's regional haze SIP to a full approval; 3) remove EPA's FIP for Kentucky which replaced reliance on CAIR with reliance on CSAPR to address the deficiencies identified in the limited disapproval of Kentucky's regional haze SIP; and 4) approve the prong 4 portions of Kentucky's 1997 8-hour ozone iSIP submission (December 13, 2007); 2010 1-hour NO₂ and 2010 1-hour SO₂ iSIP submission (April 26, 2013); and 2012 annual PM_{2.5} iSIP submission (February 8, 2016). EPA did not receive any comments on its February 15, 2019, proposal.

II. Summary of SIP Revision and EPA Analysis

Kentucky's November 16, 2018, SIP revision corrects the deficiencies identified by EPA in the June 7, 2012 limited disapproval of the Commonwealth's regional haze SIP by replacing reliance on CAIR with reliance on CSAPR. As discussed in the NPRM in greater detail, EPA finds that this SIP revision satisfies the NO_x and SO₂ BART requirements for EGUs formerly subject to CAIR; the reasonable progress requirements with respect to SO₂ emissions from these units; and the requirement that an LTS contain all measures necessary to achieve reasonable progress, and thus, allows for a fully-approvable regional haze SIP.

EPA finds that the Commonwealth's reliance on CSAPR for certain BART, reasonable progress, and LTS requirements is in accordance with the CAA and regional haze rule requirements (including 40 CFR 51.308(e)(2)), as EPA has recently affirmed that CSAPR remains an appropriate alternative to source-specific BART controls for EGUs participating in

CSAPR.⁷ In that action, EPA determined that changes to CSAPR's geographic scope resulting from the actions that EPA has taken in response to the CSAPR budget remand in *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015) do not affect the continued validity of participation in CSAPR as a BART alternative.⁸ Because the deficiencies in Kentucky's regional haze SIP that were identified in EPA's limited disapproval are addressed through the November 16, 2018 SIP revision, the Agency is now fully approving the Commonwealth's regional haze SIP.

Additionally, EPA finds that the prong 4 portions of Kentucky's iSIP submittals for the 1997 8-hour ozone, 2010 1-hour NO₂, 2010 1-hour SO₂, and 2012 annual PM_{2.5} NAAQS are fully approvable because Kentucky now has a fully-approved regional haze SIP. The specific details of these iSIP revisions and the November 16, 2018 regional haze SIP revision and the rationale for EPA's approval of these SIP revisions are discussed in the NPRM.

III. Final Action

EPA finds that Kentucky's November 16, 2018, SIP revision satisfies the NO_x and SO₂ BART requirements for EGUs formerly subject to CAIR; the Commonwealth's reasonable progress obligations with respect to SO₂ emissions from these EGUs; and, in combination with the previously approved elements of Kentucky's regional haze SIP, the requirement that the Commonwealth's LTS contain the measures necessary to achieve reasonable progress.

⁷ See 82 FR 45481 (September 29, 2017).

⁸ Numerous parties filed petitions for review of CSAPR in the D.C. Circuit, and on August 21, 2012, the court issued its ruling, vacating and remanding CSAPR to EPA and ordering continued implementation of CAIR. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit's vacatur of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets included the Phase 2 SO₂ emissions budgets for four states and the Phase 2 ozone-season NO_x budgets for 11 states. The court did not invalidate the CSAPR budgets for Kentucky.

Accordingly, EPA is taking the following actions: 1) approving Kentucky's November 16, 2018, SIP submission to change reliance from CAIR to CSAPR in the Commonwealth's regional haze SIP; 2) converting EPA's limited approval/limited disapproval of Kentucky's regional haze SIP to a full approval; 3) removing EPA's FIP for Kentucky which replaced reliance on CAIR with reliance on CSAPR to address the deficiencies identified in the limited disapproval of Kentucky's regional haze SIP; and 4) approving the prong 4 portion of Kentucky's 1997 8-hour Ozone iSIP submission (December 13, 2007); 2010 1-hour NO₂ and 2010 1-hour SO₂ iSIP submission (April 26, 2013); and 2012 annual PM_{2.5} iSIP submission (February 8, 2016). All other iSIP requirements applicable to these Kentucky infrastructure SIP submissions have been or will be addressed in separate rulemakings.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, because it does not contain any information collection activities.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandates as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, in Kentucky. It will not have substantial direct effects on tribal governments. EPA has determined that this action does not have substantial direct effects on tribal governments because, as it relates to prong 4, this action is not approving any specific rule, but rather determining that the approved SIP for Kentucky meets certain CAA requirements. As it relates to the regional haze SIP, replacing reliance on CAIR with reliance on CSAPR has no substantial direct effects because the reliance on CSAPR for regional haze purposes in Kentucky already existed through a FIP. EPA notes that this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

L. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

M. Judicial Review

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 publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rules 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 CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 29, 2019.

Andrew R. Wheeler,
EPA Administrator.

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 new entries for “110(a)(1) and (2) Infrastructure Requirements for the 1997 8-hour Ozone NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO₂ NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO₂ NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM_{2.5} NAAQS” and “Regional Haze Plan Revision” 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
**		**	**	*
110(a)(1) and (2) Infrastructure Requirements for the 1997 8-hour Ozone NAAQS.	Kentucky	12/13/2007	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i)(II) only.
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO ₂ NAAQS.	Kentucky	4/26/2013	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i)(II) only.

110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO ₂ NAAQS.	Kentucky	4/26/2013	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i)(II) only.
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual PM _{2.5} NAAQS.	Kentucky	2/8/2016	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Addressing prong 4 of section 110(a)(2)(D)(i)(II) only.
Regional Haze Plan Revision.	Kentucky	11/16/2018	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	

§ 52.936 [Reserved]

3. Section 52.936 is removed and reserved.

[FR Doc. 2019-06740 Filed: 4/5/2019 8:45 am; Publication Date: 4/8/2019]