



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0217; FRL-10009-27-Region 4]

Air Plan Approval; Kentucky; Infrastructure Requirements

for the 2015 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of a State Implementation Plan (SIP) submission, provided by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ), on January 9, 2019, to demonstrate that the Commonwealth meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each such NAAQS. KDAQ certified that the Kentucky SIP contains provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in Kentucky. EPA has in this action determined that the Kentucky infrastructure SIP submissions satisfy certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: This rule is 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-2019-0217. All documents in the docket are listed on the 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 or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation 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: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bell can be reached via electronic mail at bell.tiereny@epa.gov or the telephone number (404) 562-9088.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone revising the 8-hour ozone NAAQS from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section

110(a)(1) of the CAA, states are required to submit SIP submission meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an “infrastructure SIP.” States were required to submit such SIPs for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.¹

This action approves portions of Kentucky’s January 9, 2019, SIP submission for the applicable requirements of the 2015 8-hour ozone NAAQS. In this action, EPA is not acting upon portions of the submission pertaining to the interstate transport provisions of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 and 2) pertaining to contribution to nonattainment or interference with maintenance in other states; the prevention of significant deterioration (PSD) provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J); and air quality modeling and submission of modeling data under section 110(a)(2)(K). EPA will address these provisions in separate rulemaking actions.

In a notice of proposed rulemaking (NPRM) published on March 12, 2020 (85 FR 14442), EPA proposed to approve Kentucky SIP submission provided on January 9, 2019, for the applicable infrastructure SIP requirements of the 2015 8-hour ozone NAAQS. The March 12, 2020, NPRM provides additional detail regarding the background and rationale for EPA’s

¹ In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally approved SIP. In addition, certain federally approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

action. Comments were due to EPA on or before April 13, 2020. No adverse comments were received.

II. Final Action

With the exception of interstate transport provisions of section 110(a)(2)(D)(i)(II) (prongs 1 and 2), PSD provisions related to major sources under section 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J), and air quality models of section 110(a)(2)(K), EPA is approving Kentucky's January 9, 2019, infrastructure SIP submission for the 2015 8-hour ozone NAAQS for the above described infrastructure SIP requirements. EPA is approving portions of Kentucky's infrastructure SIP submission for the 2015 8-hour ozone NAAQS because these aspects of the submission are consistent with section 110 of the CAA.

III. 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. 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 5, 2020.

Mary Walker,

Regional Administrator,

Region 4.

Accordingly, 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 the entry “110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS” at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of nonregulatory 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 2015 8-Hour Ozone NAAQS.	Kentucky	1/9/2019	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	With the exception of 110(a)(2)(D)(i)(I) (prongs 1 and 2), PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(I) (prong 3), and 110(a)(2)(J), and air quality modeling under section 110(a)(2)(K).

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