



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0217; FRL-10013-28-Region 4]

Air Plan Approvals; KY; Prevention of Significant Deterioration and Modeling

Infrastructure Requirements for 2015 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of the Kentucky infrastructure State Implementation Plan (SIP) submission for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) submitted to EPA in a letter dated January 11, 2019. Whenever EPA promulgates a new or revised NAAQS, the Clean Air Act (CAA or Act) requires that each state adopt and submit a SIP submission to establish that the state's SIP meets infrastructure requirements for the implementation, maintenance, and enforcement of each such NAAQS. Specifically, EPA is taking final action to approve portions of the Kentucky infrastructure SIP submission that address the prevention of significant deterioration (PSD) and modeling requirements 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 can either be retrieved electronically via 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: Andres Febres, 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. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at febres-martinez.andres@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On October 1, 2015, EPA promulgated revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards 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 revisions 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 SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.¹

As explained in a notice of proposed rulemaking (NPRM) published on July 6, 2020 (85 FR 40165), Kentucky cites to several regulations² to demonstrate that their respective SIPs meet the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3),³ 110(a)(2)(J), and 110(a)(2)(K). In addition to the regulations approved into the SIP, a state may also rely on EPA’s January 17, 2017 (82 FR 5182), final rulemaking entitled, “*Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches To Address Ozone and Fine Particulate Matter*” (also referred to as the 2017 *Guideline*)⁴ to satisfy the modeling requirements of Section 110(a)(2)(K). On February 4, 2020, the Commonwealth of Kentucky submitted a letter to EPA to demonstrate that its existing SIP-approved regulations provide the state with the authority to integrate and implement the requirements and recommendations of the current version of EPA’s 2017 *Guideline*. In its February 4, 2020, letter, the Commonwealth clarified that, pursuant to 401 KAR 50:040 and 401 KAR 51:017, the Commonwealth has the authority to use alternative

¹ In 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 SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

² Kentucky’s January 11, 2019, infrastructure SIP submission cites several SIP-approved regulations under Chapters 50 and 51, including the following: 401 KAR 51:010,² *Attainment status designations*; 401 KAR 51:017, *Prevention of significant deterioration of air quality*; and 401 KAR 50:040, *Air quality models*, to meet the PSD program requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), 110(a)(2)(J), and 110(a)(2)(K).

³ Section 110(a)(2)(D)(i)(II) contains a provision that prohibits emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state, which is commonly referred to as “prong 3.”

⁴ EPA’s *Guideline on Air Quality Models* is codified at 40 CFR part 51, Appendix W and is generically referred to as *Guideline* herein.

modeling, and that modeling based on the *Guideline*, as published on January 17, 2017, is the most appropriate.⁵

EPA has evaluated Kentucky's January 11, 2019, submittal⁶ and the February 4, 2020, letter and is making the determination that Kentucky has demonstrated that it has the authority to use the 2017 *Guideline*, and notes that the February 4, 2020, letter includes KY DAQ's determination that the 2017 *Guideline* is most appropriate for use. Accordingly, EPA is taking final action to approve Kentucky's use of the 2017 *Guideline* as outlined in KY DAQ's February 4, 2020, letter and making a finding that Kentucky's infrastructure SIP submission demonstrates that new major sources and major modifications in areas of the Commonwealth designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements. EPA also concludes that Kentucky's infrastructure SIP submission, supplemented with the February 4, 2020, letter, meets the requirements of 110(a)(2)(C) for the infrastructure requirements for the 2015 8-hour ozone NAAQS.

In the NPRM published on July 6, 2020, EPA proposed approval of Kentucky's infrastructure submission provided on January 11, 2019, for the applicable infrastructure SIP requirements of the 2015 8-hour ozone NAAQS. The NPRM provides additional detail

⁵ See February 4, 2020, letter "RE: Clarification of the use of Appendix W within Kentucky's 2015 8-hour Ozone Infrastructure SIP submittal" from Melissa Duff, Director of Division of Air Quality for Kentucky Energy and Environment Cabinet, Department of Environmental Protection to Mary S. Walker, Regional Administrator for U.S. Environmental Protection Agency, Region 4. The February 4, 2020, letter is in the docket for this proposed rulemaking.

⁶ The Commonwealth of Kentucky submitted its infrastructure submission through the State Planning Electronic Collaboration System on January 9, 2019; however, the cover letter of the submittal is dated January 11, 2019.

regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before July 27, 2020. EPA did not receive any comments during the comment period.

II. Final Action

EPA is taking final action to approve the portions of Kentucky's January 11, 2019, 2015 8-hour ozone infrastructure SIP submission that address the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), and modeling requirements related to CAA section 110(a)(2)(K). All other outstanding applicable infrastructure requirements for this SIP submission have been or will be addressed in separate rulemakings.

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. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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 SIPs subject to these actions are 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. 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, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 31, 2020.

Mary Walker,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 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. In § 52.920 amend the table in paragraph (e) by adding an entry for “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 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 2015 8-Hour Ozone NAAQS	Kentucky	1/11/2019	[Insert date of publication in Federal Register], [Insert citation of publication]	Addressing 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).