



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0370; FRL-10014-94-Region 4]

Air Plan Approval; KY; Updates to Attainment Status Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), on December 9, 2019. The SIP revision updates the description and attainment status designations of geographic areas within the Commonwealth for several National Ambient Air Quality Standards (NAAQS or standards). The updates are being made to conform Kentucky's attainment status tables with the federal attainment status designations for these areas. EPA is proposing to approve Kentucky's SIP revision because it is consistent with the Clean Air Act (CAA or Act) and EPA's regulations.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2020-0370 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 and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9644. Ms. Sanchez can also be reached via electronic mail at sanchez.madolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 108 and 109 of the CAA require EPA to set NAAQS for criteria air pollutants (ozone (O₃), particulate matter (PM), carbon monoxide, lead, sulfur dioxide (SO₂), and nitrogen dioxide) and to undertake periodic review of these standards. After EPA sets a new NAAQS or revises an existing standard, the CAA requires EPA to determine if areas of the country meet the new standards and to designate areas as either nonattainment, attainment, or unclassifiable.¹

Such designations inform the state's planning and implementation of requirements to achieve and maintain the NAAQS for each area within that state.

¹ A nonattainment area is an area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS; an attainment area is an area that meets the NAAQS; and an unclassifiable area is an area that cannot be classified on the basis of available information as meeting or not meeting the NAAQS. *See* CAA section 107(d)(1)(A).

Section 107(d) of the CAA governs the process for these initial area designations. Under this process, states and tribes submit recommendations to EPA as to whether or not an area is attaining the NAAQS for criteria air pollutants. EPA then considers these recommendations as part of its obligation to promulgate the area designations for the new or revised NAAQS. EPA codifies its designations for areas within each state in 40 CFR Part 81.² Under section 107(d) of the CAA, a designation for an area remains in effect until redesignated by EPA.

EPA is proposing to approve changes to Kentucky rule 401 Kentucky Administrative Regulation (KAR) 51:010, *Attainment status designations*, which update the description and attainment status designations of geographic areas within the Commonwealth with regard to a number of NAAQS. The Commonwealth of Kentucky last amended 401 KAR 51:010 in 2016.³ Since that time, EPA promulgated the 2015 8-hour ozone NAAQS and redesignated several areas within the Commonwealth. Kentucky amended 401 KAR 51:010 in 2019 by updating the attainment status designations in Sections 7 through 9 for O₃, PM less than 2.5 microns in diameter (PM_{2.5}), and SO₂ to conform with EPA's attainment status designations in 40 CFR 81.318. Regulation 401 KAR 51:010 has also been amended by making one minor textual modification to the NECESSITY, FUNCTION, AND CONFORMITY section. The SIP submittal containing the updated Kentucky regulation can be found in the docket at www.regulations.gov and is summarized below.

II. Analysis of the Kentucky Submittal

On December 9, 2019, the Commonwealth of Kentucky, through KDAQ, submitted a revision to the Kentucky SIP. EPA is proposing to approve the December 9, 2019, submission which amends and updates the attainment status designations for O₃, PM_{2.5}, and SO₂.

² EPA's attainment status designations for Kentucky are found at 40 CFR 81.318.

³ EPA approved those amendments into the SIP in 2018. See 83 FR 65088 (December 19, 2018).

The following are the specific changes made to Sections 7 through 9:

Section 7. – Attainment Status Designations for Ozone (O₃)

Table (4) was added to reflect the attainment status designation and classification of areas in the Commonwealth of Kentucky for the 2015 8-hour primary and secondary O₃ NAAQS.

Section 8. – Attainment Status Designations for PM_{2.5}

Table (1) was amended to reflect the attainment status designation of areas in the Commonwealth of Kentucky for the 1997 annual primary and secondary PM_{2.5} NAAQS.

Table (2) was amended to reflect the attainment status designation of areas for the 2012 annual PM_{2.5} primary NAAQS.

Section 9. – Attainment Status Designations for Sulfur Dioxide (SO₂)

Table (2) was amended to reflect the attainment status designation of areas in the Commonwealth of Kentucky for the 2010 primary SO₂ NAAQS.⁴

EPA has reviewed these changes to the Kentucky regulations for attainment status designations and is proposing to find that these changes are consistent with the attainment status designations in 40 CFR 81.318.

In addition to the change of attainment status designations in Sections 7 through 9 of 401 KAR 51:010, the SIP submittal includes a minor textual modification to the NECESSITY, FUNCTION, AND CONFORMITY section that changes the word “requires” to “authorizes” in the first sentence.⁵

III. Incorporation by Reference

⁴ Although Kentucky’s December 9, 2019, SIP revision predates EPA’s redesignation of the Jefferson County, Kentucky area to attainment for the SO₂ NAAQS, the table accurately reflects the current status of that area. *See* 85 FR 47670 (August 6, 2020).

⁵ The revised sentence reads “KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards.”

In this notice, 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 51:010, *Attainment status designations*, state effective November 19, 2019, which was revised to be consistent with the federal attainment status designations for the areas within the Commonwealth. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and 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’s December 9, 2019, SIP revision which contains updates to Kentucky regulation 401 KAR 51:010. The revised regulation amends and updates the attainment status designations for O₃, PM_{2.5}, and SO₂ to conform with EPA’s attainment status designations in 40 CFR 81.318. EPA is proposing to approve these changes because they are consistent with the CAA and EPA regulations.

V. 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 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 proposed 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.

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: September 30, 2020.

Mary Walker,
Regional Administrator,
Region 4.

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