



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0521; FRL-9949-92-Region 4]

Air Plan Approval; Kentucky; Revisions to Louisville

Definitions and Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 22, 2011, and May 3, 2012, the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), submitted revisions to the Kentucky State Implementation Plan (SIP) on behalf of the Louisville Metro Air Pollution Control District (District). At this time, the Environmental Protection Agency (EPA) is proposing to approve several portions of the submissions that modify the District's air quality regulations as incorporated into the SIP. The revisions to the regulatory portion of the SIP that EPA is proposing to approve pertain to changes to the District's air quality standards for lead (Pb), particulate matter (both PM_{2.5} and PM₁₀), ozone (O₃), nitrogen dioxide (NO₂), and sulfur dioxide (SO₂) to reflect the National Ambient Air Quality Standards (NAAQS), definitional changes, and regulatory consolidation. EPA is proposing to approve these portions of the SIP revisions because the Commonwealth has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act). EPA will act on the other portions of KDAQ's March 22, 2011, and May 3, 2012, submittals in a separate action.

DATES: Written 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-2015-0521 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: Richard Wong, 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. The telephone number is (404) 562-8726. Mr. Wong can be reached via electronic mail at wong.richard@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 this rulemaking, EPA is proposing to approve portions of the revisions to the Jefferson County air quality regulations¹ in the Kentucky SIP, submitted by the Commonwealth on March 22, 2011, and May 3, 2012. The March 22, 2011, submission revises Jefferson County Regulation 1.02 - *Definitions* and consolidates Regulations 3.02 - *Applicability of Ambient Air Quality Standards*; 3.03 - *Definitions*; 3.04 - *Ambient Air Quality Standards*; and 3.05 - *Methods of Measurement* into Regulation 3.01 - *Ambient Air Quality Standards* (currently entitled *Purpose of Standards and Expression of Non-Degradation Intention* in the SIP) by removing Regulations 3.02 through 3.05 and expanding and retitling Regulation 3.01. This submission also seeks to revise Regulation 1.06 - *Source Self-Monitoring and Reporting* and Regulation 1.07 - *Emissions During Startups, Shutdowns, Malfunctions and Emergencies*. EPA is not taking action on the proposed changes to Regulation 1.06 at this time. EPA approved the revision to Regulation 1.07 on June 10, 2014. See 79 FR 33101. The May 3, 2012, submission builds on the revisions to Regulation 3.01

¹ In 2003, the City of Louisville and Jefferson County governments merged and the “Jefferson County Air Pollution Control District” was renamed the “Louisville Metro Air Pollution Control District.” However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading “Air Pollution Control District of Jefferson County.” Thus, to be consistent with the terminology used in the SIP, EPA refers throughout this notice to regulations contained in Jefferson County portion of the Kentucky SIP as the “Jefferson County” regulations.

proposed in the March 22, 2011, submission by updating the Jefferson County air quality standards for Pb, PM_{2.5}, PM₁₀, O₃, NO₂, and SO₂ to reflect the NAAQS, reordering the sections within the regulation, and making several textual modifications. The May 3, 2012, submission also seeks to remove the Ford Motor Company NO_x Reasonably Available Control Technology (RACT) permit from the SIP and replace it with a Title V permit; EPA is not taking action on the proposed permit substitution at this time. The 2011 and 2012 SIP submittals can be found in the Docket for this proposed rulemaking at www.regulations.gov and are summarized below.

II. EPA's Analysis of Kentucky's SIP Revisions

a. Definitions and Regulatory Consolidation – March 22, 2011, Submittal

The March 22, 2011, SIP submission revises Regulation 1.02 by adding, removing, and modifying definitions and consolidates Regulations 3.02, 3.03, 3.04, and 3.05 into Regulation 3.01 by removing Regulations 3.02 through 3.05 and expanding Regulation 3.01.

EPA is proposing to approve all of the changes to Regulation 1.02² except for the addition of definitions for the terms “acute noncancer effect,” “cancer,” “carcinogen,” and “chronic noncancer effect,” because EPA approves only definitions that relate to the attainment and maintenance of the NAAQS. The remainder of the changes to Regulation 1.02 consist of updates to the definitions to make them consistent with definitions used by EPA; removal of definitions that are no longer used in the District's regulations; clarification of the definitions of “ambient air,” “emission standard,” and “malfunction”; and addition of definitions for “bypass,”

² Among the changes to Regulation 1.02 which EPA is proposing to approve are changes that the District adopted in 2001 and 2005. The District refers to the version of Regulation 1.02 which it adopted in 2001 as “Version 10.” The District refers to the version of Regulation 1.02 which it adopted in 2005 as “Version 11.” If EPA's proposed approval of changes to Regulation 1.02 is finalized, the text of the regulation in the SIP will reflect Version 11.

“excess emissions,” “preventable upset condition,” “toxic air contaminant,” “upset condition,” and “welfare.”

Specifically, an additional sentence has been added to the definition of “ambient air” to reflect computer dispersion modeling guidance provided by EPA regarding public access to private property that is not under the control of the stationary source from which emissions under study originate. The definition of “emission standard” was modified to provide examples of what makes an emission standard legally enforceable (namely, federal, state, or local law or regulation, District permit, or Board Order) and to recognize that an opacity limit is an emission standard. The definition of “malfunction” has been revised to add the qualification that the equipment failure causes, or is likely to cause, emissions that exceed an applicable emission standard. Definitions have been added for the terms “bypass,” “preventable upset condition,” and “upset condition,” which are used in Regulation 1.07, a part of the federally-approved SIP. The definition of “excess emissions” was added to provide clarity as to the requirements in 401 KAR 63:020. The definition of “welfare,” taken from section 302(h) of the CAA, has been added to clarify which types of harmful effects from the emissions of toxic air contaminants are prohibited. The definition of “toxic air contaminant” has been added to differentiate between the specific “hazardous air pollutant” (HAP) list pursuant to section 112 of the Clean Air Act and the specific “toxic air pollutant” lists pursuant to Kentucky regulations 401 KAR 63:021 (11-11-86) and 401 KAR 63:022 (11-11-86). The District has also exempted from the definition of “volatile organic compound” five additional organic compounds that the EPA, on November 29, 2004, exempted from its corresponding definition at 40 CFR 51.100(s). *See* 69 FR 69290, 69 FR 69298. Minor clarifications were also made to the definitions of “new affected facility” and

“process.” Several other definitions were modified for clarity or for consistency with EPA definitions or were simply renumbered.

EPA is also proposing to approve the changes to Regulation 3.01 (to the extent that they are not superseded by changes in the May 3, 2012, submittal)³ and the removal of Regulations 3.02 through 3.05. Regulations 3.02 through 3.05 were incorporated into Regulation 3.01.

EPA believes that these proposed changes to the regulatory portion of the SIP are consistent with section 110 of the CAA and meet the regulatory requirements pertaining to SIPs. Pursuant to CAA section 110(l), the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. With respect to the District’s addition of exemptions from the definition of “volatile organic compound,” the change is approvable under section 110(l) because it reflects changes to federal regulations based on findings that the exempted compounds are negligibly reactive.

EPA is not taking action on the changes to Regulations 1.06 identified in the March 22, 2011, SIP submission.

b. Updated NAAQS – May 3, 2012, Submittal

The May 3, 2012, submission builds on the revisions to Regulation 3.01 proposed in the March 22, 2011, submission by updating the District’s ambient air quality standards to reflect the NAAQS for Pb, PM_{2.5}, PM₁₀, O₃, NO₂, and SO₂, reordering the sections within the regulation, and making several textual modifications. The updates to the air quality standards are discussed in

³ The District refers to the revised version of Regulation 3.01 in its March 22, 2011, submittal as “Version 4” and the revised version of Regulation 3.01 in its May 3, 2012, submittal as “Version 5.” If EPA’s proposed approval of changes to Regulation 3.01 is finalized, the text of the regulation in the SIP will reflect Version 5.

further detail below.

i. Pb

On November 12, 2008, EPA promulgated a new 1-hour primary and secondary NAAQS for Pb at a level of 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), based on a rolling 3-month average. *See* 73 FR 66964. Accordingly, in the May 3, 2012, SIP submission, Jefferson County revised Regulation 3.01 to update its air quality standards for Pb to be consistent with the NAAQS promulgated by EPA in 2008.

ii. Particulate Matter

On October 17, 2006, EPA revised the 24-hour primary and secondary $\text{PM}_{2.5}$ NAAQS to $35 \mu\text{g}/\text{m}^3$, based on the 98th percentile of 24-hour $\text{PM}_{2.5}$ concentrations averaged over three years, and revoked the annual PM_{10} NAAQS. *See* 71 FR 61144. Accordingly, in the May 3, 2012, SIP submission, Jefferson County revised Regulation 3.01 to update its primary air quality standard for particulate matter to be consistent with the NAAQS promulgated by EPA in 2006.⁴

iii. O₃

On July 18, 1997, EPA revoked the 1-hour primary NAAQS for O₃. *See* 62 FR 38856. On March 27, 2008, EPA promulgated a new 8-hour primary and secondary NAAQS for O₃ at a level of 0.075 parts per million (ppm), based on an annual fourth-highest daily maximum 8-hr concentration averaged over three years. *See* 73 FR 16483. Accordingly, in the May 3, 2012, SIP submission, Jefferson County revised Regulation 3.01 to update its air quality standards for O₃ to be consistent with the NAAQS promulgated by EPA in 2008.

⁴ On January 15, 2013, EPA revised the primary annual $\text{PM}_{2.5}$ NAAQS to $12 \mu\text{g}/\text{m}^3$, based on annual mean $\text{PM}_{2.5}$ concentrations averaged over three years. *See* 78 FR 3086. Since Jefferson County's May 3, 2012, submission preceded EPA's promulgation of the new annual standard, an update reflecting the new NAAQS was not included as part of SIP revision.

iv. NO₂

On February 9, 2010, EPA promulgated a new 1-hour primary NAAQS for NO₂ at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474. Accordingly, in the May 3, 2012, SIP submission, Jefferson County revised Regulation 3.01 to update its primary air quality standard for NO₂ to be consistent with the NAAQS promulgated by EPA in 2010.

v. SO₂

On June 22, 2010, EPA promulgated a revised primary SO₂ NAAQS to an hourly standard of 75 ppb, based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations, and revoked the 24-hour SO₂ NAAQS. *See* 75 FR 35520. Accordingly, in the May 3, 2012, SIP submission, Jefferson County revised Regulation 3.01 to update its primary air quality standards for SO₂ to be consistent with the NAAQS promulgated by EPA in 2010.

EPA has reviewed the revisions to Regulation 3.01 in the May 3, 2012, SIP submission, including the NAAQS updates for Pb, particulate matter, O₃, NO₂, and SO₂, and has made the preliminary determination that these changes are consistent with the CAA.

III. Incorporation by Reference

In this rule, 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 Jefferson County Regulation 1.02 - *Definitions* (except for the definitions of “Acute noncancer effect,” “Cancer,” “Carcinogen,” and “Chronic noncancer

effect”) and Regulation 3.01 - *Ambient Air Quality Standards*. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the Region 4 office (see the ADDRESSES section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the portions of the Commonwealth of Kentucky’s March 22, 2011, and May 3, 2012, SIP revisions identified in section II, above, because they are consistent with the CAA.

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. Accordingly, 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 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);
- 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, Incorporation by Reference, Intergovernmental relations, Nitrogen dioxide, Sulfur Dioxide, Reporting and recordkeeping requirements.

Dated: July 20, 2016.

Heather McTeer Toney

Regional Administrator,

Region 4.

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