



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2016-0526; FRL- 9957-39-Region 4]**

**Air Plan Approval; KY; RACM Determination for the KY Portion of the Louisville Area**

**1997 Annual PM<sub>2.5</sub>**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on August 9, 2016, that addresses reasonably available control measures (RACM) for the Kentucky portion of the Louisville, KY-IN, nonattainment area for the 1997 Annual fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS) (hereinafter referred to as the “bi-state Louisville Area” or “Area”).

**DATES:** This rule will be effective [**insert 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-2016-0526. All documents in the docket are listed on the [www.regulations.gov](http://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](http://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:** Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sanchez can be reached via telephone at (404) 562-9644 and via electronic mail at [sanchez.madolyn@epa.gov](mailto:sanchez.madolyn@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In 1997, EPA promulgated the first air quality standards for PM<sub>2.5</sub>. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) (based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations) and a 24-hour standard of 65  $\mu\text{g}/\text{m}^3$  (based on a 3-year average of the 98<sup>th</sup> percentile of 24-hour concentrations). *See* 62 FR 38652 (July 18, 1997). On January 5, 2005 (70 FR 944), and supplemented on April 14, 2005 (70 FR 19844), EPA designated the bi-state Louisville Area as nonattainment for the 1997 Annual PM<sub>2.5</sub> NAAQS. In that action, EPA defined the bi-state Louisville Area to include Bullitt and Jefferson Counties in

Kentucky as well as Clark and Floyd Counties and a portion of Jefferson County (Madison Township) in Indiana. Designation of an area as nonattainment for PM<sub>2.5</sub> starts the process for a state to develop and submit to EPA a SIP revision under title I, part D of the Clean Air Act (CAA or Act). This SIP revision must include, among other elements, a demonstration of how the NAAQS will be attained in the nonattainment area as expeditiously as practicable, but no later than the attainment date required by the CAA.

Originally, EPA designated all 1997 PM<sub>2.5</sub> NAAQS areas under title I, part D, subpart 1 (hereinafter “Subpart 1”). Subpart 1, comprised of CAA sections 171-179B, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Section 172(c) contains the general SIP requirements for these areas, including RACM requirements under section 172(c)(1). On April 25, 2007 (72 FR 20586), EPA promulgated a rule, codified at 40 CFR part 51, subpart Z, to implement the 1997 PM<sub>2.5</sub> NAAQS under Subpart 1 (hereinafter referred to as the “1997 PM<sub>2.5</sub> Implementation Rule”).<sup>1</sup> On December 3, 2008, Kentucky submitted an attainment demonstration SIP revision for the Area that addressed RACM and certain other section 172(c) elements including a reasonable further progress (RFP) plan, base-year and attainment-year emissions inventories, and contingency measures for the Area. This SIP revision included a

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<sup>1</sup> On January 4, 2013, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013), the United State Court of Appeals for the District of Columbia Circuit (D.C. Circuit) found that EPA erred in implementing the 1997 PM<sub>2.5</sub> NAAQS pursuant solely to the general implementation provisions of Subpart 1 rather than the particulate matter-specific provisions in title I, part D, subpart 4. The court remanded both the 1997 PM<sub>2.5</sub> Implementation Rule and the final rule entitled “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)” (73 FR 28321, May 16, 2008) to EPA to address this error. In 2014, EPA finalized a rule classifying areas previously designated nonattainment for the 1997 and/or 2006 fine particle pollution standards under Subpart 1, including the bi-state Louisville Area, as “Moderate” nonattainment areas under subpart 4 and setting deadlines for SIP submissions addressing the requirements of subpart 4. *See* 79 FR 31566 (June 2, 2014) [hereinafter 2014 Rule].

section 172(c)(1) RACM determination that there were no potential emissions control measures that, if considered collectively, would advance the attainment date by one year or more.

In 2011, EPA determined that the bi-state Louisville Area had attained the 1997 Annual PM<sub>2.5</sub> NAAQS based upon complete, quality-assured, and certified ambient air monitoring data for the 2007-2009 period. *See* 76 FR 55544 (September 7, 2011); 40 CFR 52.929(b). As a result of this determination and in accordance with 40 CFR 51.1004(c), the requirements for the Area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures, and other planning SIP revisions related to attainment of the 1997 Annual PM<sub>2.5</sub> NAAQS are suspended for so long as: the area is redesignated to attainment, at which time the requirements no longer apply; or EPA determines that the area has violated the PM<sub>2.5</sub> NAAQS, at which time the area is again required to submit such plans. Therefore, Kentucky withdrew the aforementioned PM<sub>2.5</sub> attainment demonstration SIP revision except for the portion addressing emissions inventory requirements under section 172(c)(3). EPA later approved Kentucky's 2002 base-year emissions inventory for the Louisville Area pursuant to section 172(c)(3) on August 2, 2012 (77 FR 45956).

On March 5, 2012, Kentucky submitted a request to redesignate the Kentucky portion of the bi-state Louisville Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS.<sup>2</sup> As the result of a 2015 decision from the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) in *Sierra Club v. EPA*, 793 F.3d 656 (6<sup>th</sup> Cir. 2015) requiring a SIP-approved Subpart 1 RACM determination prior to the redesignation of a 1997 Annual PM<sub>2.5</sub> NAAQS nonattainment area,

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<sup>2</sup> Kentucky submitted its redesignation request prior to the aforementioned ruling in *Natural Resources Defense Council v. EPA*. As discussed in the 2014 Rule, EPA's position is that this ruling does not apply retroactively. *See* 79 FR at 31568.

Kentucky submitted a SIP revision on August 9, 2016, to address the section 172(c)(1) RACM requirements and to support the Commonwealth's March 5, 2012, redesignation request. In that SIP revision, the Commonwealth determined that no additional control measures are necessary in the Area to satisfy the CAA section 172(c)(1) RACM requirements.

In a notice of proposed rulemaking (NPRM) published on October 21, 2016 (81 FR 72755), EPA proposed to conclude that Kentucky's Subpart 1 RACM determination meets the requirements of CAA section 172(c)(1) and to incorporate this RACM determination into the SIP. The details of Kentucky's SIP revision and the rationale for EPA's action are explained in the NPRM. Comments on the proposed rulemaking were due on or before November 21, 2016. EPA did not receive any adverse comments on the proposed action.

## **II. Final Action**

EPA is approving Kentucky's August 9, 2016, SIP revision addressing RACM requirements for the 1997 Annual PM<sub>2.5</sub> NAAQS for the Kentucky portion of the bi-state Louisville Area. EPA has concluded that Kentucky's Subpart 1 RACM determination meets the requirements of CAA section 172(c)(1) and is incorporating this RACM determination into the SIP.

## **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. Accordingly, 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);
- 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 Clean Air Act; 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 [FEDERAL REGISTER OFFICE: 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, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 15, 2016.

Heather McTeer Toney,  
Regional Administrator,  
Region 4.

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 a new entry for “RACM for the Kentucky portion of Louisville, KY-IN Area for the 1997 Annual PM<sub>2.5</sub> NAAQS” at the end of the table to read as follows:

**§52.920 Identification of plan.**

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(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
**	**	*	*	*
RACM for the Kentucky portion of Louisville, KY-IN Area for the 1997 Annual PM <sub>2.5</sub> NAAQS	Bullitt and Jefferson Counties	08/09/2016	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	

[FR Doc. 2016-31023 Filed: 12/23/2016 8:45 am; Publication Date: 12/27/2016]