



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0308; FRL- 9984-07-Region 4]

Air Plan Approval; KY; Updates to Attainment Status Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), submitted a revision to the Kentucky State Implementation Plan (SIP) on December 13, 2016. The SIP revision updates, as of October 6, 2016, the description and attainment status designations for geographic areas within the Commonwealth for several National Ambient Air Quality Standards (NAAQS). The updates are being made to conform Kentucky's attainment status tables with the federal attainment status designations made for these areas. The Environmental Protection Agency (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-2018-0308 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, 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) 562-9644. 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 (CO), lead (Pb), sulfur dioxide (SO₂), and nitrogen dioxide (NO₂), 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, unclassifiable/attainment, or unclassifiable. Such designations inform the state's planning and implementation of requirements to achieve and maintain the NAAQS for each area within that

state.

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 and boundaries for the new or revised NAAQS. EPA codifies its designations for areas within each state in 40 CFR Part 81.¹ Under section 107(d) of the CAA, a designation for an area remains in effect until redesignated by EPA.

In this rule, EPA is proposing to approve revisions to Kentucky regulation 401 KAR 51:010, which updates, as of October 6, 2016, the description and attainment or nonattainment status of geographic areas within the Commonwealth with regard to a number of NAAQS. The Commonwealth of Kentucky last amended Regulation 401 KAR 51:010 in 1997 and, since that time, EPA has promulgated several revisions to the designations of areas within the Commonwealth. As a result, Kentucky has amended Regulation 401 KAR 51:010 by updating, as of October 6, 2016, the attainment status designations in Sections 4 through 8 and Section 10 for CO, Pb, NO₂, O₃, PM_{2.5}, and total suspended solids (TSP)² to conform with EPA's designations as reflected in 40 CFR 81.318. Regulation 401 KAR 51:010 has also been amended by making minor textual modifications to the NECESSITY, FUNCTION, AND CONFORMITY section and Section 1 (Definitions) and Section 2 (Attainment Status Designations). The SIP submittal amending the Kentucky regulation to incorporate these updates can be found in the docket at www.regulations.gov and are summarized below.

¹ EPA's attainment status designations for Kentucky are found at 40 CFR 81.318.

² EPA is not acting on the portion of the submittal (Section 9) that modifies the attainment status designations for SO₂.

II. Analysis of the Kentucky Submittal

On December 15, 2016,³ the Commonwealth of Kentucky, through KDAQ, submitted a revision to the Kentucky SIP. EPA is proposing to approve portions of the December 15, 2016, submission which amend and update, as of October 6, 2016, the attainment status designations for CO, Pb, NO₂, O₃, PM_{2.5}, and TSP. EPA is not acting on the portion of the submittal (Section 9) that modifies the attainment status designations for SO₂.

Minor textual modifications were made to the NECESSITY, FUNCTION, AND CONFORMITY section by changing the wording from “Environmental and Public Protection Cabinet” to “cabinet” and by changing the word “prescribe” to “promulgate.” Section 1 (Definitions) was modified by removing the wording “as used in Sections 4 through 7 of this administrative regulation” from the definition “Rest of State”; by re-ordering the definition “Road” from subsection (3) to subsection (2) to be in alphabetical order and by removing the wording “as used in Section 2(3) of this administrative regulation” from the definition; and by removing the wording “as used in Section 8 of this administrative regulation” from the definition “Statewide.” Section 2 (Attainment Status Designations) was modified in subsection (1) by listing the pollutants in alphabetical order and by adding the pollutants “lead,” “ozone,” and “particulate matter” to the list; by rewording “Section 5 through 8” to “Sections 4 through 10”; and by removing the sentence “The attainment status of areas of the Commonwealth of Kentucky with respect to total suspended particulate is listed in Section 4 of this administrative regulation”

³ EPA notes that the cover letter was dated December 13, 2016. The submittal date is the date of receipt, which was December 15, 2016.

and in subsection (2) by adding the acronym “U.S. EPA” following “U. S. Environmental Protection Agency.”

The attainment status tables (Sections 4 through 8 and Section 10) in 401 KAR 51.010 were re-ordered to be in alphabetical order of the pollutant - CO, Pb, NO₂, O₃, PM_{2.5}, and TSP. The following are the specific revisions made to Sections 4 through 8 and Section 10:

Section 4. – Attainment Status Designations for Carbon Monoxide (CO)

The attainment status designation table for CO was amended to reflect the attainment status of areas in the Commonwealth of Kentucky for the 1971 CO NAAQS.

Section 5. – Attainment Status Designations for Lead (Pb)

The attainment status designation table for Pb was amended to reflect the attainment status of areas in the Commonwealth of Kentucky for the 2008 Pb NAAQS.

Section 6. – Attainment Status Designations for Nitrogen Oxides (NO₂)

The attainment status designation Table (1) for NO₂ was amended to add the “1971 Annual Standard” title to the table. Table (2) was added to reflect the attainment status of areas in the Commonwealth of Kentucky for the 2010 one-hour NO₂ NAAQS.

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

The following language was added to subsection (1): “The 1971 One (1) Hour Standard was revoked effective June 15, 2005, for all areas in the Commonwealth of Kentucky. The Cincinnati-Hamilton, Edmonson County, Huntington-Ashland, Lexington-Fayette, Louisville, Owensboro, and Paducah areas shall be considered maintenance for the one (1) hour national ambient air quality standards for the purposes of 40 CFR Part 51, Subpart X.” The corresponding table for the 1971 O₃ standard was removed.

Table (2) was added to reflect the attainment status designation of areas in the Commonwealth of Kentucky for the 1997 eight-hour (8-hour) primary and secondary O₃ NAAQS.

Table (3) was added to reflect the attainment status designation of areas for the 2008 8-hour primary and secondary O₃ NAAQS.

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

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

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

Table (3) was added to reflect the attainment status of areas for the 1997 twenty-four hour (24-hour) primary and secondary PM_{2.5} NAAQS.

Table (4) was added to reflect the attainment status of areas for the 2006 24-hour primary and secondary PM_{2.5} NAAQS.

Section 10. – Attainment Status Designations for Total Suspended Particulates (TSP)

The attainment status designation table for TSP was amended to reflect the attainment status of areas in the Commonwealth of Kentucky for the 1971 TSP NAAQS.

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

In addition to the revision of attainment status designations in Sections 4 through 8 and Section 10 of Regulation 401 KAR 51:010, the SIP submittal includes minor textual

modifications to the NECESSITY, FUNCTION, AND CONFORMITY section and Section 1 (Definitions) and Section 2 (Attainment Status Designations). EPA is proposing to find that these are administrative changes that are consistent with the requirements of 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 Kentucky Regulation 401 KAR 51:010, *Attainment status designations*, effective October 6, 2016, which was revised to be consistent with the federal attainment status designations for the areas within the Commonwealth.⁴ 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 of Kentucky December 13, 2016, SIP revisions identified in section II above, because these changes 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,

⁴ The incorporation by reference will not include Section 9 of 401 KAR 51:010, as EPA is not acting on Section 9 in this action.

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 10, 2018.

Onis “Trey” Glenn, III,
Regional Administrator,
Region 4.

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