



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0217; FRL-10006-37-Region 4]

Air Plan Approval; Kentucky; Infrastructure Requirements

for the 2015 8-hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, provided by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ), on January 9, 2019, to demonstrate that the Commonwealth meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each such NAAQS. KDAQ certified that the Kentucky SIP contains provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in Kentucky. EPA is proposing to determine that Kentucky's submission addresses certain infrastructure elements for the 2015 8-hour ozone NAAQS.

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-2019-0217 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: Tiereny Bell, 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. Ms. Bell can be reached via electronic mail at bell.tiereny@epa.gov or the telephone number (404) 562-9088.

SUPPLEMENTARY INFORMATION

I. Background

On October 1, 2015, (published on October 26, 2015 (80 FR 65292)), EPA promulgated a revised primary and secondary NAAQS for ozone revising the 8-hour ozone NAAQS from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. 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 SIPs for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.¹

This rulemaking is proposing to approve portions of Kentucky’s January 9, 2019, ozone infrastructure SIP submission for the applicable requirements of the 2015 8-hour ozone NAAQS, with the exception of the interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to contribution to nonattainment or interference with maintenance in other states; the prevention of significant deterioration (PSD) provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J); and air quality modeling and submission of modeling data under sections 110(a)(2)(K). With respect to the interstate transport provisions of section 110(a)(2)(D)(i)(I), the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the air quality modeling provisions under section 110(a)(2)(K), EPA will address these in separate rulemaking actions.

II. What Elements are Required Under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may

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

prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.²

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include 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. The requirements of Section 110(a)(2) are listed below and summarized in Section IV, and in EPA's September 13, 2013, memorandum entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).”³

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System

² Throughout this rulemaking, unless otherwise indicated, the term “Kentucky Administrative Regulations” or “KAR” indicates that the cited regulation has been approved into Kentucky's federally-approved SIP. The term “KRS” indicates cited Kentucky Revised Statutes, which govern the Commonwealth of Kentucky and are not a part of the SIP unless otherwise indicated.

³ Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the Part D nonattainment permitting requirements of 110(a)(2)(C).

- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources⁴
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas⁵
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA’s Approach to the Review of Infrastructure SIP Submissions?

EPA is acting upon the SIP submission from Kentucky that addresses certain infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 8-hour ozone NAAQS. Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and

⁴ As mentioned above, the Part D permit program for construction and modification of stationary sources is not relevant to this proposed rulemaking.

⁵ As also mentioned above, this element is not relevant to this proposed rulemaking.

enforcement of the NAAQS, commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.⁶ Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.⁷ EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

IV. What is EPA’s Analysis of How Kentucky Addressed the Elements of the Sections 110(a)(1) and (2) “Infrastructure” Provisions?

Kentucky’s January 9, 2019 infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A) *Emission Limits and Other Control Measures*: Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits,

⁶ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA’s prior action on Kentucky’s infrastructure SIP to address the 2010 Nitrogen Dioxide NAAQS. (81 FR 41488 (June 27, 2016)).

⁷ See *Mont. Env’tl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements.

Kentucky's submission cites to numerous SIP-approved regulations that include enforceable emission limits and other control measures found in 401 Kentucky Administrative Regulations (KAR) Chapters 50-53, 59, 61, 63, and 65 to demonstrate that the Commonwealth meets the requirements of this element, including the following:

- **Chapter 50 *General Administrative Procedures*:** 401 KAR 50:010. *Definitions for 401 KAR Chapter 50*; 401 KAR 50:012. *General application*; 401 KAR 50:015. *Documents incorporated by reference*; 401 KAR 50:020. *Air quality control regions*; 401 KAR 50:025. *Classification of counties*; 401 KAR 50:040. *Air quality models*; 401 KAR 50:042. *Good engineering practice stack height*; 401 KAR 50:045. *Performance tests*; 401 KAR 50:047. *Test procedures for capture efficiency*; 401 KAR 50:050. *Monitoring*; 401 KAR 50:055. *General compliance requirements*; and 401 KAR 50:060. *Enforcement.*
- **Chapter 51 *Attainment and Maintenance of the National Ambient Air Quality Standards*:** 401 KAR 51:001. *Definitions for 401 KAR Chapter 51*; 401 KAR 51:005. *Purpose and General Provisions*; 401 KAR 51:010. *Attainment Status Designations*; 401 KAR 51:017. *Prevention of significant deterioration of air quality*; 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas*; 401 KAR 51:150 *NO_x requirements for stationary and internal combustion engines*; 401 KAR 51:160 *NO_x requirements for large utility and industrial boilers* 401 KAR 51:170 *NO_x requirements for cement kilns*; 401 KAR 51:180 *NO_x credits for early reduction and emergency*; 401

KAR 51:190 *Banking and trading NOx allowances*; 401 KAR 51:195 *NOx opt-in provisions*; 401 KAR 51:220 *CAIR NOx Ozone Season Trading Program*.

- **Chapter 52 Permits, Registrations, and Prohibitory Rules:** 401 KAR 52:001. *Definitions for 401 KAR Chapter 52*; 401 KAR 52:020. *Title V permits*⁸; 401 KAR 52:030. *Federally-enforceable permits for nonmajor sources*; 401 KAR 52:090. *Prohibitory rule for hot mix asphalt plants*.
- **Chapter 53 Ambient Air Quality:** 401 KAR 53:005. *General provisions*; 401 KAR 53:010 *Ambient air quality standards*.
- **Chapter 59 New Source Standards:** 401 KAR 59:001 *Definition*; 401 KAR 59:005 *General provisions*; 401 KAR 59:010 *New process operations*; 401 KAR 59:015 *New indirect heat exchangers*; 401 KAR 59:020 *New Incinerators*; 401 KAR 59:046 *Selected new petroleum refining processes and equipment*; 401 KAR 59:050 *New storage vessels for petroleum liquids*; 401 KAR 59:095 *New oil-effluent water separators*; 401 KAR 59:101 *New bulk gasoline plants*; 401 KAR 59:174 *Stage II controls at gasoline dispensing facilities*; 401 KAR 59:175 *New service stations*; 401 KAR 59:185 *New solvent metal cleaning equipment*; 401 KAR 59:190 *New insulation of magnet wire operations*; 401 KAR 59:210 *New fabric, vinyl and paper surface coating operations*; 401 KAR 59:212 *New graphic arts facilities using rotogravure and flexography*; 401 KAR 59:214 *New factory surface coating operations of flat wood paneling*; 401 KAR 59:225 *New miscellaneous metal parts and products surface coating operations*; 401

⁸ This rule is not approved into Kentucky's federally-approved SIP.

KAR 59:230 *New synthesized pharmaceutical product manufacturing operations*; 401 KAR 59:240 *New perchloroethylene dry cleaning systems*; 401 KAR 59:315 *Specific new sources*; 401 KAR 59:760 *Commercial Motor Vehicle and Mobile Equipment Refinishing Operations*.

- **Chapter 61 Existing Source Standards:** 401 KAR 61:001 *Definitions and abbreviations of terms used in 401 KAR Chapter 61*; 401 KAR 61:005 *General provisions*; 401 KAR 61:010 *Existing incinerators*; 401 KAR 61:045 *Existing oil-effluent water separators*; 401 KAR 61:050 *Existing storage vessels for petroleum liquids*; 401 KAR 61:055 *Existing loading facilities at bulk gasoline terminals*; 401 KAR 61:056 *Existing bulk gasoline plants*; 401 KAR 61:060 *Existing sources using organic solvents*; 401 KAR 61:065 *Existing nitric acid plants*; 401 KAR 61:085 *Existing service stations*; 401 KAR 61:090 *Existing automobile and light-duty surface coating operations*; 401 KAR 61:095 *Existing solvent metal cleaning equipment*; 401 KAR 61:100 *Existing insulation of magnet wire operations*; 401 KAR 61:105 *Existing metal furniture surface coating operations*; 401 KAR 61:110 *Existing large appliance surface coating operations.*; 401 KAR 61:120 *Existing fabric, vinyl and paper surface coating operations*; 401 KAR 61:122 *Existing graphic arts facilities using rotogravure and flexography*; 401 KAR 61:124 *Existing factory surface coating operations of flat wood paneling.*; 401 KAR 61:125 *Existing can surface coating operations*; 401 KAR 61:130 *Existing coil surface coating operations*; 401 KAR 61:132 *Existing miscellaneous metal parts and products surface coating operations*; 401 KAR 61:135 *Selected existing petroleum refining processes and equipment*; 401 KAR 61:137 *Leaks from existing petroleum refinery equipment*; 401 KAR 61:150 *Existing synthesized pharmaceutical product*

manufacturing operations; 401 KAR 61:155 Existing pneumatic rubber tire manufacturing plants; 401 KAR 61:160 Existing perchloroethylene dry cleaning systems; 401 KAR 61:175 Leaks from existing synthetic organic chemical and polymer manufacturing equipment.

- ***Chapter 63 General Standard of Performance:*** 401 KAR 63:001 *Definitions and abbreviations of terms used in 401 KAR Chapter 63;* 401 KAR 63:005 *Open burning;* 401 KAR 63:010 *Fugitive emissions;* 401 KAR 63:025 *Asphalt paving operations;* 401 KAR 63:031 *Leaks from gasoline tank trucks.*
- ***Chapter 65 Mobile Source-Related Emissions:*** 401 KAR 63:001 *Definitions and abbreviations of terms used in 401 KAR Chapter 63;* 401 KAR 63:005 *Open burning.*

Collectively these regulations establish enforceable emissions limitations and other control measures, means or techniques, for activities that contribute to ozone concentrations in the ambient air and provide authority to establish such limits and measures as well as schedules for compliance to meet the applicable requirements of the CAA. In addition, Kentucky Revised Statute (KRS) Chapter 224 Section 10-100 (KRS 224.10-100), provides the Energy and Environment Cabinet the authority to administer all rules, regulations, and orders promulgated under Chapter 224, and to provide for the prevention, abatement, and control of all water, land, and air pollution.

EPA has made the preliminary determination that the provisions contained in these regulations, and Kentucky's statute are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance for the 2015 8-hour ozone NAAQS in the Commonwealth.

2. 110(a)(2)(B) Ambient Air Quality Monitoring/Data System: Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. These requirements are met through KRS 224.10-100 (22), which provides the authority to require the installation, maintenance, and use of equipment, devices, or tests and methodologies to monitor the nature and amount of any substance emitted into the ambient air and to provide the information to the Cabinet.

KDAQ also cites to the following regulations to demonstrate that the Commonwealth meets the requirements of this element: 401 KAR 50:050. *Monitoring*; 401 KAR 51:017. *Prevention of significant deterioration of air quality*; and 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas*; 401 KAR 53:005. *General provisions*; 401 KAR 53:010. *Ambient air quality standards*.

Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.⁹ KDAQ's monitoring network plan was submitted on June 28, 2019, and approved by EPA on October 3, 2019. Kentucky's approved monitoring network plan can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2019-0217. These SIP-approved rules and Kentucky's statute, along with

⁹ On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

Kentucky's Ambient Air Monitoring Network Plan, provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. Therefore, EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2015 8-hour ozone NAAQS.

3. 110(a)(2)(C) Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources: This element consists of three sub-elements: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (i.e., the major source PSD program). EPA's analysis of how these provisions of Kentucky's SIP address each sub-element are described below.

Enforcement: KDAQ's SIP-approved regulation, 401 KAR 50:060, *Enforcement*, provides for enforcement of emission limits and control measures associated with ozone through permit terms and conditions, and compliance schedules. This regulation also authorizes the Cabinet to modify and revoke permits and compliance schedules, and authorizes administrative penalties and injunctive relief, citing to statutory civil penalty and injunctive relief provisions of KRS 224.99-010. EPA has made the preliminary determination that Kentucky's SIP is adequate for enforcement related to the 2015 8-hour ozone NAAQS.

Preconstruction PSD Permitting for Major Sources: With regard to section 110(a)(2)(C) related to the programs for preconstruction PSD permitting for major sources, EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to Kentucky's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

Regulation of minor sources and modifications: Kentucky’s SIP-approved rules, 401 KAR 51:005, *Purpose and general provisions* and 401 KAR 52:030, *Federally-enforceable permits for non-major sources* collectively govern the preconstruction permitting of modifications and construction of minor stationary sources, and minor modifications of major stationary sources.

EPA has made the preliminary determination that Kentucky’s SIP is adequate for program enforcement of control measures, and regulation of minor sources and modifications related to the 2015 8-hour ozone NAAQS.

4. 110(a)(2)(D)(i)(I) and (II) Interstate Pollution Transport: Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (“prong 1”) and interfering with maintenance of the NAAQS in another state (“prong 2”). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (“prong 3”), or to protect visibility in another state (“prong 4”).

110(a)(2)(D)(i)(I) – prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will consider these requirements in relation to Kentucky’s 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II) – prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to Kentucky’s 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II) – prong 4: Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions to protect visibility in other States. This requirement is satisfied for any relevant NAAQS when the state has a fully-approved regional haze SIP. Kentucky’s SIP contains a fully approved Regional Haze Plan (*see* 84 FR 13800 (April 8, 2019)). EPA’s approval of the Kentucky regional haze SIP therefore ensures that emissions from Kentucky are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS. EPA has made the preliminary determination Kentucky’s SIPs meet the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS.

5. 110(a)(2)(D)(ii) *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Regulation 401 KAR 51:010. *Attainment Status Designations* designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the NAAQS. Regulation 401 KAR 51:017. *Prevention of significant deterioration of air quality* and Regulation 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas*, Section 1, require Kentucky to provide notice to nearby states that may be affected by proposed major source modifications. These regulations cite to Federal notification requirements under 40 CFR Sections 51.166 and to 401 KAR 52:100. *Public, affected state, and the US. EPA review*, Section 6, which requires that public notice for

permit actions be provided to affected states. Additionally, Kentucky does not have any pending obligation under sections 115 and 126 of the CAA with respect to the 2015 ozone NAAQS. EPA has made the preliminary determination that Kentucky's SIP is adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2015 8-hour ozone NAAQS.

6. 110(a)(2)(E) Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies: Section 110(a)(2)(E) requires that each implementation plan provide: (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Kentucky's SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii), and (iii).

In support of elements 110(a)(2)(E)(i) and (iii), Kentucky's infrastructure submission demonstrates that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards, general policies, a system of permits, fee schedules for the review of plans, and other planning needs. With respect to having the necessary funding and authority to implement the Kentucky SIP, Kentucky's State statute 401 KAR 50:038. *Air Emissions Fee*, and the following State statutes support sub-elements (i) and (iii): KRS 224.10-100. *Powers and Duties of the Cabinet* and KRS 224.10-020. *Departments within the cabinet - Offices and divisions within the departments – Appointments*. As evidence of the adequacy of KDAQ's

resources with respect to sub-elements (i) and (iii), KDAQ has a performance partnership agreement with EPA outlining 105 grant commitments and current status of these commitments for fiscal year 2018. Annually, the Commonwealth updates this performance partnership agreement based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2018, therefore, KDAQ's grants were finalized and closed out. With respect to (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions, Kentucky's State statute KRS 224.2-130, *Concurrent jurisdiction with local district* provides the Cabinet with oversight authority of local programs and concurrent jurisdiction. EPA has made the preliminary determination that Kentucky has adequate resources for implementation of the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(E)(i) and (iii).

Section 110(a)(2)(E)(ii) requires that Kentucky comply with section 128 of the CAA. Section 128 requires that (a)(1) the majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; (a)(2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar, powers be adequately disclosed. For purposes of section 128(a)(1), Kentucky has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by the Director of the KDAQ. As such, a "board or body" is not responsible for approving permits or enforcement orders in Kentucky, and

the requirements of section 128(a)(1) are not applicable. For purposes of section 128(a)(2), Kentucky's SIP has been updated. On October 3, 2012 (77 FR 60307), EPA took final action to approve KRS Chapters 11A.020, 11A.030, 11A.040 and Chapters 224.10-020 and 224.10-100 into the SIP to address the conflict of interest requirements of section 128. These SIP-approved state statutes establish the powers and duties of the Cabinet, departments within the Cabinet, and offices and divisions within such departments (Chapters 224.10-020 and 224.10-100) and support sub-element (ii) by requiring adequate disclosures of potential conflicts (KRS 11A.020. *Public servant prohibited from certain conduct – Exception - Disclosure of personal or private interest*) and otherwise ensuring that public officers and servants do not engage in activities that may present a conflict of interest (KRS 11A.030 *Considerations in determination to abstain from action on official decision - Advisory opinion*; and KRS 11A.040 *Acts prohibited for public servant or officer – Exception*). With the incorporation of these statutes into the Kentucky SIP, the Commonwealth has adequately addressed the requirements of section 128(a)(2). Thus, EPA is proposing approval of KDAQ's infrastructure SIP submission for the 2015 8-hour ozone NAAQS with respect to section 110(a)(2)(E)(ii).

7. 110(a)(2)(F) Stationary Source Monitoring and Reporting: Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. EPA's rules regarding how SIPs need to address source monitoring

requirements at 40 CFR 51.212 require SIPs to exclude any provision that would prevent the use of credible evidence of noncompliance.

The Kentucky infrastructure submission demonstrates how the major source and minor source emission inventory programs collect emission data throughout the Commonwealth and ensure the quality of such data. Kentucky meets these requirements through Chapter 50 *General Administrative Procedures*, specifically 401 KAR 50:050 *Monitoring*. 401 KAR 50:050, Section 1, *Monitoring Records and Reporting*, states that the Cabinet may require a facility to install, use, and maintain stack gas and ambient air monitoring equipment and to establish and maintain records, and make periodic emission reports at intervals prescribed by the Cabinet. Also, KRS 224.10-100 (23) requires that any person engaged in any operation regulated pursuant to this chapter file with the Cabinet reports containing information as to location, size, height, rate of emission or discharge, and composition of any substance discharged or emitted into the ambient air or into the waters or onto the land of the Commonwealth, and such other information the Cabinet may require. In addition, EPA is unaware of any provision preventing the use of credible evidence in the Kentucky SIP.

Additionally, Kentucky is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI), pursuant to Subpart A to 40 CFR Part 51, - “Air Emissions Reporting Requirements,” (AERR). All states are required to submit a comprehensive emission inventory every three years and report emissions for certain larger sources annually through EPA’s online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them – nitrogen oxides, sulfur dioxides, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Kentucky’s most recently published

triennial compiled emissions information is available as part of the 2014 NEI. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website <https://www.epa.gov/air-emissions-inventories>.¹⁰

EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for the stationary source monitoring systems related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G) *Emergency Powers*: This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Section 303 authorizes EPA to take action seeking to immediately restrain pollution sources if such pollution is presenting an imminent and substantial endangerment to public health, welfare, or the environment. Kentucky's infrastructure SIP submission identifies air pollution emergency episodes and preplanned abatement strategies as outlined in the following Kentucky regulations in Chapter 55 *Emergency Episodes*, specifically: 401 KAR 55:005. *Significant harm criteria*, 401 KAR 55:010. *Episode Criteria*, and 401 KAR 55:015. *Episode Declaration*. 401 KAR 55:020, *Abatement*, 401 KAR 55:005. *Significant Harm Criteria*, Section 1, *Purpose*, defines those levels of pollutant concentration which must be prevented in order to avoid significant harm to the health of persons. 401 KAR 55:010. *Episodic Criteria* defines those levels of pollutant concentrations which justify the proclamation of an air pollution alert, air pollution warning, an air pollution emergency. 401 KAR 55:015. *Episode Declaration*

¹⁰ EPA compiles the emissions data and releases the National Emissions Inventory (NEI) to the public triennial. According to EPA's 2017 NEI Plan, the 2017 NEI will be available on April 1, 2020, *See* https://www.epa.gov/sites/production/files/2019-04/documents/2017nei_plan_addendum_final_apr2019_0.pdf

provides for the curtailment or reduction of processes or operations which emit an air contaminant or an air contaminant precursor whose criteria has been reached and are located in the affected areas for which an episode level has been declared.

In addition, KRS 224.10-100 *Powers and duties of cabinet* and KRS 224.10-410 *Order for discontinuance, abatement, or alleviation of condition or activity without hearing -- Subsequent hearing*, establish the authority for Kentucky's secretary to issue orders to person(s) for discontinuance, abatement, or alleviation of any condition or activity without hearing because the condition or activity presents a danger to the health or welfare of the people of the state, and for the Cabinet to require adoption of any remedial measures deemed necessary. EPA has made the preliminary determination that Kentucky's SIP, and state laws are adequate for emergency powers related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) SIP Revisions: Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. As previously discussed, KDAQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Kentucky has the ability and authority to respond to calls for SIP revisions and has provided a number of SIP revisions over the years for implementation of the NAAQS.

Additionally, 401 KAR 53:010 outlines the ambient air quality standards necessary for the protection of the public health, the general welfare, and the property and people in the

Commonwealth and states that within 60 days of promulgation or revision of any NAAQS by EPA, the Cabinet will initiate a process to promulgate or review this administrative regulation. 401 KAR 51:010. *Attainment Status Designations* provides provisions for the Cabinet to review applicable data and submit to EPA proposed revisions to the list of attainment-nonattainment areas. EPA has made the preliminary determination that Kentucky adequately demonstrates a commitment to provide future SIP revisions related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission for the 2015 8-hour ozone NAAQS with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) Consultation with Government Officials, Public Notification, and PSD and Visibility Protection: EPA is proposing to approve Kentucky's infrastructure SIP submission for the 2015 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, and the public notification requirements of section 127. EPA's rationale for each sub-element is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to meet the requirements of section 121 relating to consultation with local governments, designated organizations and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. This requirement is met through the Regional Haze SIP, which provides for continued consultation with government officials, including the FLMs. Kentucky also adopted consultation procedures in coordination with the transportation partners in the Commonwealth, for the implementation of transportation conformity, which includes the development of mobile inventories for SIP development. Implementation of transportation conformity as outlined in the consultation

procedures requires KDAQ to consult with Federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. Also, KDAQ notes in its January 1, 2019, SIP submission that the following Kentucky regulations provide the Commonwealth the authority to meet this requirement: 401 KAR 50:055. *General compliance requirements*; 401 KAR 50:060. *Enforcement*; 401 KAR 50:065. *Conformity of general federal actions*; 401 KAR 50:066. *Conformity of Transportation Plans, Programs, and Projects*; 401 KAR 51:017. *Prevention of Significant Deterioration of Air Quality*; and 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas*. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate consultation with government officials related to the 2015 8-hour ozone NAAQS when necessary for the consultation with government official(s) element of section 110(a)(2)(J).

Public notification (127 public notification): With respect to public notification, section 110(a)(3)(J) of the CAA requires states to notify the public of NAAQS exceedances and associated health hazards, and to enhance public awareness of measures that can prevent such exceedances. These requirements are met through the following Kentucky regulations: 401 KAR 51:001. *Definitions for 401 KAR Chapter 51*; 401 KAR 51:005. *Purpose and General Provisions*; 401 KAR 51:010. *Attainment Status Designations*; 401 KAR 51:017. *Prevention of significant deterioration of air quality*; 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas*; and 401 KAR 52:100. *Public, Affected State, and the US EPA Review*. Additionally, Kentucky provides air quality information to the public via its website at: <http://eppcapp.ky.gov/daq/>. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate the Commonwealth's ability to provide public notification related to the 2015 8-hour ozone NAAQS when necessary for the public notification element of

section 110(a)(2)(J).

PSD: With regard to the PSD element of section 110(a)(2)(J), EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to Kentucky's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. KDAQ referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals. As such, EPA has made the preliminary determination that Kentucky's infrastructure SIP submission is approvable for section 110(a)(2)(J) related to the 2015 8-hour ozone NAAQS and that Kentucky does not need to rely on its regional haze program to address this element.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made. With regard to section 110(a)(2)(K), air quality models, EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to Kentucky's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

12. 110(a)(2)(L) *Permitting Fees:* This section requires the SIP to direct the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit

required under the CAA, a fee sufficient to cover: (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Kentucky regulation, 401 KAR 50:038 *Air Emissions Fee*,¹¹ provides for the assessment of fees necessary to fund the state permit program. KDAQ ensures this is sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. Additionally, Kentucky has a fully approved title V operating permit program at 401 KAR 52:020 *Title V permits*¹² that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Kentucky's SIP and practices adequately provide for permitting fees related to the 2015 8-hour ozone NAAQS, when necessary. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation and Participation by Affected Local Entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. Kentucky regulation, 401 KAR 50:066. *Conformity of transportation plans, programs, and projects*, and the interagency consultation process as directed by Kentucky's approved Conformity SIP and 40 CFR 93.112 provide for consultation with local groups. More specifically, Kentucky adopted state-wide consultation procedures for the implementation of transportation conformity which includes the

¹¹ This rule is not approved into the federally approved SIP.

¹² This rule is not approved into the federally approved SIP.

development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. Required partners covered by Kentucky's consultation procedures include Federal, state and local transportation and air quality agency officials. Further, Kentucky's ozone infrastructure SIP submission notes that the following State regulations and State statutes provide the Commonwealth the authority to meet the requirements of this element; 401 KAR 52:100. *Public, Affected State, and the US EPA Review*; and KRS Chapter 77. *Air Pollution Control*. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate consultation with affected local entities related to the 2015 8-hour ozone NAAQS when necessary.

V. Proposed Action

With the exception of interstate transport provisions of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 and 2), PSD provisions related to major sources under section 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J), and air quality models of section 110(a)(2)(K), EPA is proposing to approve Kentucky's January 9, 2019, infrastructure SIP submission for the 2015 8-hour ozone NAAQS for the above described infrastructure SIP requirements. EPA is proposing to approve these portions of Kentucky's infrastructure SIP submission for the 2015 8-hour ozone NAAQS because these aspects of the submission are consistent with section 110 of the CAA.

VI. 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 proposed action merely proposes to approve state law as meeting federal requirements and would 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);
- 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).

In addition, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 27, 2020.

Mary S. Walker,

Regional Administrator,

Region 4.

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