

grant health care providers additional authorities that go beyond what is required or authorized by Federal law and regulations or as defined in the laws and practice acts of the health care providers' State license, registration, or certification.

(2) Situations where a health care provider's VA practice of telehealth may be inconsistent with a State law or State license, registration, or certification requirements related to telehealth include when:

(i) The beneficiary and the health care provider are physically located in different States during the episode of care;

(ii) The beneficiary is receiving services in a State other than the health care provider's State of licensure, registration, or certification;

(iii) The health care provider is delivering services in a State other than the health care provider's State of licensure, registration, or certification;

(iv) The health care provider is delivering services either on or outside VA property;

(v) The beneficiary is receiving services while she or he is located either on or outside VA property;

(vi) The beneficiary has or has not previously been assessed, in person, by the health care provider; or

(vii) Other State requirements would prevent or impede the practice of health care providers delivering telehealth to VA beneficiaries.

(c) *Preemption of State law.* To achieve important Federal interests, including, but not limited to, the ability to provide the same complete health care and hospital service to beneficiaries in all States under 38 U.S.C. 7301, this section preempts conflicting State laws relating to the practice of health care providers when such health care providers are practicing telehealth within the scope of their VA employment. Any State law, rule, regulation or requirement pursuant to such law, is without any force or effect on, and State governments have no legal authority to enforce them in relation to, this section or decisions made by VA under this section.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2017-0550; FRL-9977-93—Region 4]

#### Air Plan Approval; KY; Fine Particulate Matter and Ozone NAAQS Revisions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve portions of State Implementation Plan (SIP) revisions submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality, on December 21, 2016, and August 29, 2017, on behalf of the Louisville Metro Air Pollution Control District (District). The changes to the SIP that EPA is taking final action to approve are the portions of the submittals that modify the District's Ambient Air Quality Standards regulation, specifically changes to the District's air quality standards for fine particulate matter (PM<sub>2.5</sub>) and ozone to reflect the 2012 PM<sub>2.5</sub> and 2015 ozone national ambient air quality standards (NAAQS). EPA has determined that the December 21, 2016, and August 29, 2017, SIP revisions are consistent with the Clean Air Act (CAA or Act). EPA will act on the other portions of the December 21, 2016, and August 29, 2017, submittals in a separate action.

**DATES:** This rule will be effective June 11, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0550. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not 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, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. Ms. Sanchez can be reached via telephone at (404) 562-9644 or via electronic mail at [sanchez.madolyn@epa.gov](mailto:sanchez.madolyn@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 a proposed rulemaking published on February 8, 2018 (83 FR 5593), EPA proposed to approve into the Kentucky SIP the portions of the revisions to the Jefferson County<sup>1</sup> air quality regulations addressing Regulation 3.01, *Ambient Air Quality Standards*, submitted by the Commonwealth on December 21, 2016, and August 29, 2017. Regulation 3.01 is amended<sup>2</sup> by updating air quality standards in Section 7 for PM<sub>2.5</sub> and ozone to reflect the most recent NAAQS, removing the numbering of the subsections in Section 7, and making textual modifications to the footnotes. The details of Kentucky's submissions and the rationale for EPA's action are explained in the proposed rulemaking. Comments on the proposed rulemaking were due on or before March 12, 2018.

<sup>1</sup> 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 the Jefferson County portion of the Kentucky SIP as the "Jefferson County" regulations.

<sup>2</sup> The District refers to the revised version of Regulation 3.01 in its December 21, 2016, submittal as "Version 6" and the revised version of Regulation 3.01 in its August 29, 2017, submittal as "Version 7." Upon EPA's final approval of changes to Regulation 3.01, the text of the regulation in the SIP will reflect Version 7.

EPA did not receive any relevant comments on the proposed action.

## II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Jefferson County Regulation 3.01, *Ambient Air Quality Standards*, effective September 21, 2016, and February 15, 2017, which was revised to be consistent with the current NAAQS. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://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). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>3</sup>

## III. Final Action

EPA is taking final action to approve portions of the Commonwealth of Kentucky's SIP revisions submitted on December 21, 2016, and August 29, 2017, because these revisions are consistent with the CAA. The submissions revise the District's air quality standards for PM<sub>2.5</sub> and ozone to reflect the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely 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);

- 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 (Pub. L. 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.

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 July 10, 2018. 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 30, 2018.

**Onis "Trey" Glenn, III**

*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(c), Table 2 is amended under Reg 3—Ambient Air Quality Standards by revising the entry for "3.01 Ambient Air Quality Standards" to read as follows:

#### § 52.920 Identification of plan.

*	*	*	*	*
	(c)	*	*	*
*	*	*	*	*

<sup>3</sup> 62 FR 27968 (May 22, 1997).

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date	Explanation
*	*	*	*	*	*
<b>Reg 3—Ambient Air Quality Standards</b>					
3.01	Ambient Air Quality Standards.	5/11/2018	[Insert citation of publication]	02/15/17	
*	*	*	*	*	*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-HQ-OAR-2018-0170; FRL-9977-90-OAR]

RIN 2060-AU02

**Extension of Deadline for Action on the Section 126(b) Petition From New York**

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

**ACTION:** Final rule.

**SUMMARY:** In this action, the Environmental Protection Agency (EPA) is determining that 60 days is insufficient time to complete the technical and other analyses and public notice-and-comment process required for our review of a petition dated March 12, 2018, submitted by the state of New York pursuant to section 126(b) of the Clean Air Act (CAA). The petition requests that the EPA make a finding that emissions from the collection of identified sources in nine states (Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia) significantly contribute to and interfere with maintenance of the 2008 and 2015 ozone national ambient air quality standards (NAAQS) in New York State. Under section 307(d)(10) of the CAA, the EPA is authorized to grant a time extension for responding to a petition if the EPA determines that the extension is necessary to afford the public, and the Agency, adequate opportunity to carry out the purposes of the section 307(d) notice-and-comment rulemaking requirements. By this action, the EPA is making that determination. The EPA is, therefore, extending the deadline for acting on the petition from May 13, 2018, to no later than November 9, 2018.

**DATES:** This final rule is effective on May 11, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2018-0170. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., 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 electronically through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lev Gabrilovich, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539-01, Research Triangle Park, NC 27711, telephone (919) 541-1496; email at [gabrilovich.lev@epa.gov](mailto:gabrilovich.lev@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background and Legal Standard**

This is a procedural action to extend the deadline for the EPA to respond to a petition from the state of New York filed pursuant to CAA section 126(b). The EPA received the petition on March 14, 2018. The petition requests that the EPA make a finding under section 126(b) of the CAA that emissions from the collection of identified sources in nine states (Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia) significantly contribute to and interfere with maintenance of the 2008 and 2015 ozone NAAQS in New York in violation of the provisions of section 110(a)(2)(D)(i) of the CAA, also known as the “good neighbor” provisions.

Section 126(b) of the CAA authorizes states to petition the EPA to find that a major source or group of stationary sources in upwind states emits or would emit any air pollutant in violation of the prohibition of CAA section

110(a)(2)(D)(i)<sup>1</sup> by contributing significantly to nonattainment or interfering with maintenance problems in downwind states. Section 110(a)(2)(D)(i)(I) of the CAA prohibits emissions of any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any NAAQS. Under CAA section 126(c), any existing sources for which the EPA makes the requested finding must cease operations within 3 months of the finding, except that the source may continue to operate if it complies with emission limitations and compliance schedules (containing increments of progress) that the EPA may provide to bring about compliance with the applicable requirements as expeditiously as practical but no later than 3 years from the date of the finding.

The CAA section 126(b) petition from the state of New York requests that the EPA make a finding that, within each of the identified nine upwind states, certain sources within the electric generating unit (EGU) and non-EGU sectors collectively emit air pollutants in violation of CAA section 110(a)(2)(D)(i) with respect to the 2008 8-hour ozone NAAQS, set at 0.075 parts per million (ppm), and the revised 2015 8-hour ozone NAAQS, set at 0.070 ppm.<sup>2</sup>

Pursuant to CAA section 126(b), the EPA must make the finding requested in the petition or must deny the petition within 60 days of its receipt and after holding a public hearing. In addition to the public hearing provisions in CAA section 126(b), the EPA’s action under

<sup>1</sup> The text of CAA section 126 codified in the United States Code cross references CAA section 110(a)(2)(D)(ii) instead of CAA section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener’s error and the correct cross reference is to CAA section 110(a)(2)(D)(i). See *Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1040-44 (DC Cir. 2001).

<sup>2</sup> On October 1, 2015, the EPA strengthened the ground-level ozone NAAQS, based on extensive scientific evidence about ozone’s effects on public health and welfare. See 80 FR 65291 (October 26, 2015).