

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 11, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2009-0426-201030; FRL-9282-6]

#### Approval and Promulgation of Implementation Plans; Kentucky; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Division of Air Quality (DAQ) of the Kentucky Environmental and Public Protection Cabinet, now called the Energy and Environment Cabinet, as demonstrating that the Commonwealth meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an "infrastructure" SIP. Kentucky certified that the Kentucky SIP contains provisions that ensure the 1997 8-hour

ozone NAAQS are implemented, enforced, and maintained in Kentucky (hereafter referred to as "infrastructure submission"). Kentucky's infrastructure submission, provided to EPA on December 13, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS.

**DATES:** Written comments must be received on or before April 18, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2009-0426, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

3. *Fax:* (404) 562-9140.

4. *Mail:* "EPA-R04-OAR-2009-0426," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2009-0426. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA

recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI 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 in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning 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 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Nacosta C. Ward, Regulatory Development Section, Air Planning 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) 562-9140. Ms. Ward can also be reached via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

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#### I. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour

average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (*see* 62 FR 38856). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 1997 8-hour ozone NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone NAAQS created uncertainty about how to proceed and many states did not provide the required “infrastructure” SIP submission for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA’s failure to issue findings of failure to submit related to the “infrastructure” requirements for the 1997 8-hour ozone NAAQS. EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA’s determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state as of January 7, 2008.

On March 27, 2008, EPA published a final rulemaking entitled, “Completeness Findings for Section 110(a) State Implementation Plans; 8-Hour Ozone NAAQS,” making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. *See* 73 FR 16205. For those states that did receive findings, the findings of failure to submit for all or a portion of a state’s implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless,

prior to that time, the affected states submitted, and EPA approved, the required SIPs.

The findings that all or portions of a state’s submission are complete establish a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). Kentucky’s infrastructure submission was received by EPA on December 13, 2007, and was determined to be complete on March 27, 2008. Kentucky was among other states that did not receive findings of failure to submit because it provided a complete submission to EPA to address the infrastructure elements for the 1997 8-hour ozone NAAQS by March 1, 2008. Today’s action is proposing to approve Kentucky’s infrastructure submission for which EPA made the completeness determination on March 27, 2008. This action is not approving any specific rule, but rather proposing that Alabama’s already approved SIP meets certain CAA requirements.

## 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 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. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

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 SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are

the subject of this proposed rulemaking are listed below<sup>1</sup> and in EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards.”

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.<sup>2</sup>
- 110(a)(2)(D): Interstate transport.<sup>3</sup>
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.<sup>4</sup>
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.

<sup>1</sup> 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 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 1 of the CAA, and (2) submissions required by section 110(a)(2)(1) which pertain to the nonattainment planning requirements of part D, Title 1 of the CAA. Today’s proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(1) or the nonattainment planning requirements of 110(a)(2)(C).

<sup>2</sup> This rulemaking only addresses requirements for this element as they relate to attainment areas.

<sup>3</sup> Today’s proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Kentucky consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the DC Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina v. EPA*, 531 F.3d 896 (DC Cir. 2008). Prior to this remand, EPA took final action to approve Kentucky’s SIP revision, which was submitted to comply with CAIR. *See* 72 FR 56623 (October 4, 2007). In so doing, Kentucky’s CAIR SIP revision addressed the interstate transport provisions in Section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has since proposed a new rule to address the interstate transport of NO<sub>x</sub> and SO<sub>x</sub> in the eastern United States. *See* 75 FR 45210 (Aug. 2, 2010) (“the Transport Rule”). However, because this rule has yet to be finalized, EPA’s action on element 110(a)(2)(D)(i) will be addressed in a separate action.

<sup>4</sup> This requirement was inadvertently omitted from EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards,” but as mentioned above is not relevant to today’s proposed rulemaking.

- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

### III. What is EPA's analysis of how Kentucky addressed the elements of Sections 110(a)(1) and (2) "infrastructure" provisions?

Kentucky's 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:* Kentucky's infrastructure submission provides an overview of the provisions of the Kentucky Air Regulations relevant to air quality control regulations. The regulations described below have been federally approved in the Kentucky SIP and include enforceable emission limitations and other control measures. Chapter 50—*Division for Air Quality; General Administrative Procedures* of the Kentucky Air Regulations generally authorizes the Kentucky Environmental and Public Protection Cabinet to adopt rules for the control of air pollution, including those necessary to obtain EPA approval under section 110 of the CAA. The most recent federally approved revision of this chapter was on April 21, 2010 (75 FR 20780). Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards* also includes references to rules adopted by Kentucky to control air pollution, including ozone precursors. The most recent federally approved revision of Chapter 51 was on April 21, 2010 (75 FR 20780). EPA has made the preliminary determination that the provisions contained in these chapters and Kentucky's practices are adequate to protect the 1997 8-hour ozone NAAQS in the Commonwealth.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having deficient SSM provisions to take steps to correct them as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are

contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. *110(a)(2)(B) Ambient air quality monitoring/data system:* Kentucky's infrastructure submission provides information in Chapter 50:050—*Monitoring*, with regard to the organization and structure of the monitoring program that includes the local air quality programs. These entities collect air monitoring data, quality assure the results and report the data. The most recent federally approved revision of this chapter was on July 12, 1982 (47 FR 30059). Chapter 51:010—*Attainment status designations* includes information indicating Kentucky's ozone monitor locations. The most recent federally approved revision of this chapter was on July 24, 1998 (63 FR 39739). Annually, EPA approves the ambient air monitoring network plan for the state agencies. On June 30, 2010, the Commonwealth of Kentucky submitted its plan to EPA, which also included the Louisville-Jefferson County local monitoring program. On October 8, 2010, EPA approved Kentucky's monitoring network plan. Kentucky's approved monitoring network plan can be accessed at <http://www.regulations.gov> using Docket ID No. EPA-R04-OAR-2009-0426. 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 1997 8-hour ozone NAAQS.

3. *110(a)(2)(C) Program for enforcement of control measures including review of proposed new sources:* In Chapter 51:052—*Review of new sources in or impacting upon nonattainment areas* of Kentucky's SIP, a description of the compliance activities of the Commonwealth's regional field offices and the one local agency in Jefferson County is included. The most recent federally approved revision of this chapter was on July 11, 2006 (71 FR 38990). It also includes a description of the Commonwealth's statutory authority to enforce regulations relating to attainment and maintenance of the 1997 8-hour ozone NAAQS. Additionally, Kentucky submitted a SIP revision on February 4, 2010, which addresses the Ozone Implementation New Source Review (NSR) Update requirements to include

nitrogen oxides (NO<sub>x</sub>) as an ozone precursor for permitting purposes for prevention of significant deterioration (PSD) and nonattainment NSR. Specifically, the Ozone Implementation NSR Update requirements included changes to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that NO<sub>x</sub> emissions are ozone precursors. EPA published a final action approving Kentucky's revisions which incorporate NO<sub>x</sub> as an ozone precursor on September 15, 2010 (75 FR 55988). Chapter 52:030—*Federally enforceable permits for non-major sources* describes how the Commonwealth's construction permits program reviews proposed new major and minor sources of volatile organic compounds (VOCs) and NO<sub>x</sub> for compliance with the 8-hour ozone NAAQS.

EPA published a final action revising Kentucky's greenhouse gas (GHG) regulations on December 29, 2010 (75 FR 81868). The revisions include two significant changes impacting the regulation of GHGs under Kentucky's NSR/PSD program; (1) provides the Commonwealth with authority to issue PSD permits governing GHGs, and (2) establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Kentucky's PSD permitting requirements for its GHG emissions. EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 1997 8-hour ozone NAAQS.

In this action, EPA is proposing to approve Kentucky's infrastructure SIP for the 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the state's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program.

The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 1997 8-hour ozone NAAQS.

4. *110(a)(2)(D)(ii) Interstate and International transport provisions:* In Chapter 51:017—*Prevention of significant deterioration of air quality*, Kentucky outlines how it will notify neighboring states of potential impacts from new or modified sources. Kentucky does not have any pending obligation under section 115 and 126. Additionally, it has federally approved regulations in its SIP that satisfy the requirements for the NO<sub>x</sub> SIP Call. See 67 FR 17624 (April 11, 2002). EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 1997 8-hour ozone NAAQS.

5. *110(a)(2)(E) Adequate resources:* The Kentucky DAQ is responsible for adopting air quality rules, revising SIPs, developing and tracking the budget, establishing the title V fees, and other planning needs. Additionally, Kentucky DAQ coordinates agreements with the local air pollution control program for Jefferson County, the Louisville Metro Air Pollution Control District. Annually, states update these grant commitments based on current SIP requirements, air quality planning and applicable requirements related NAAQS, including the 1997 8-hour ozone NAAQS. On May 6, 2010, EPA submitted a letter to the Commonwealth outlining 105 grant commitments and current status of those commitments for fiscal year 2009. The letter EPA submitted to Kentucky can be accessed at <http://www.regulations.gov> using Docket ID No. EPA-R04-OAR-2009-0426. There were no outstanding issues, therefore the Commonwealth's grants were finalized and closed out. EPA has made the preliminary determination that Kentucky has adequate resources for

implementation of the 1997 8-hour ozone NAAQS.

6. *110(a)(2)(F) Stationary source monitoring system:* Kentucky's infrastructure submission describes how the major source and minor source emission inventory programs collect emission data throughout the Commonwealth (including Jefferson County) and ensure the quality of data. These programs generate data for ozone precursors (VOCs and NO<sub>x</sub>) and summarize emissions from point, area, mobile, and biogenic (natural) sources. Kentucky DAQ uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. This is outlined in Chapter 50:050—*Monitoring of the Kentucky Air Regulations*.

Additionally, the National Emissions Inventory (NEI) is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System (EIS). States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Kentucky made its latest update to the NEI on February 17, 2011. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site <http://www.epa.gov/ttn/chief/eiinformation.html>. EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for the stationary source monitoring systems related to the 1997 8-hour ozone NAAQS.

7. *110(a)(2)(G) Emergency power:* Kentucky's infrastructure submission provides an overview of the Kentucky Air Regulations, specifically Chapter 55—*Emergency Episodes* which identifies air pollution emergency episodes and preplanned abatement strategies. The episode criteria specified

in this chapter for ozone are based on a 1-hour average ozone level at a monitoring site. These criteria have previously been approved by EPA. EPA has made the preliminary determination that these criteria are adequate to address ozone emergency episodes for the 1997 8-hour ozone NAAQS. As a result, EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for emergency powers related to the 1997 8-hour ozone NAAQS.

8. *110(a)(2)(H) Future SIP revisions:* As previously discussed, Kentucky's DAQ 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. Specific to the 1997 8-hour ozone NAAQS, Kentucky has provided the following submissions:

- May 20, 2005, SIP Revision (EPA approval, see 71 FR 4047, January 25, 2006)—Redesignation request and 175A maintenance plan for the Clarksville-Hopkinsville, TN-KY Area;
- September 29, 2006, SIP revision (EPA approval, see 72 FR 36601, July 5, 2007)—Redesignation request and 175A maintenance plan for the Louisville Area;
- September 29, 2006, SIP revision (EPA approval, see 72 FR 43172, August 3, 2007)—Redesignation request and 175A maintenance plan for the Huntington-Ashland, WV-KY Area;
- May 27, 2008, SIP revision—110(a)(1) Maintenance plans for a portion of Greenup County, Lexington Area, Owensboro Area, Edmonson County and the Paducah Area (EPA approval of the Paducah Area, see 75 FR 52467, August 27, 2010);
- January 29, 2010, SIP revision (EPA approval, see 75 FR 47218, August 5, 2010)—Redesignation request and 175A maintenance plan for the Northern Kentucky portion of the Cincinnati Area; and
- February 4, 2010, SIP revision (EPA approval, see 75 FR 55988, September 15, 2010) NO<sub>x</sub> as a precursor.

In all of Kentucky's 175A maintenance plans, the Commonwealth commits to provide additional SIP revisions for the 1997 8-hour ozone NAAQS pursuant to 175(A)(b), and also commits to provide additional SIP revisions to implement contingency measures should one of the areas that was redesignated to attainment violate the 1997 8-hour ozone NAAQS. EPA has made the preliminary determination that Kentucky's SIP and practices

adequately demonstrate a commitment to provide future SIP revisions related to the 1997 8-hour ozone NAAQS when necessary.

9. *110(a)(2)(f) (121 consultation) Consultation with government officials:* Kentucky Air Regulations Chapter 50—*Division for Air Quality; General Administrative Procedures* of the Kentucky Air Regulations and Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards* provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. More specifically, Kentucky adopted state-wide consultation procedures for the implementation of transportation conformity which includes the consideration of the development of mobile inventories for SIP development. Required partners covered by Kentucky's consultation procedures include federal, state and local transportation and air quality agency officials. EPA approved Kentucky's consultation procedures on September 15, 2010 (75 FR 55988). Additionally, DAQ submitted a regional haze plan which outlines its consultation practices with Federal Land Managers. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate consultation with government officials related to the 1997 8-hour ozone NAAQS when necessary.

10. *110(a)(2)(f) (127 public notification) Public notification:* The Commonwealth's emergency episode provisions provide for notification to the public when the NAAQS, including the ozone NAAQS, are exceeded. This is also discussed above in 110(a)(2)(G). Additionally, the Commonwealth reports daily air quality information on its state Web site at: <http://air.ky.gov/Pages/AirQualityIndexMonitoring.aspx> to inform the public on the existing air quality within the Commonwealth. 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 1997 8-hour ozone NAAQS when necessary.

11. *110(a)(2)(f) (PSD) PSD and visibility protection:* Kentucky demonstrates its authority to regulate new and modified sources of ozone precursors (VOCs and NO<sub>x</sub>) to assist in the protection of air quality in Kentucky Air Regulations Chapter 51:017—*Prevention of significant deterioration of air quality*. Kentucky submitted a SIP revision on February 4, 2010, which addresses the Ozone Implementation NSR Update requirements to include NO<sub>x</sub> as an ozone precursor for

permitting purposes. Specifically, the Ozone Implementation NSR Update requirements included changes to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that NO<sub>x</sub> emissions are ozone precursors. This SIP revision incorporates changes to Chapter 51:052—*Review of new sources in or impacting upon nonattainment areas* and Chapter 51:017—*Prevention of Significant Deterioration of air quality*. This action was proposed on April 1, 2010 (75 FR 16388). EPA published a final action approving Kentucky's revisions to incorporate changes to Chapter 51:052 and Chapter 51:017. September 15, 2010 (75 FR 55988).

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS; however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there is no new visibility obligation "triggered" under section 110(a)(2)(f) when a new NAAQS becomes effective. This would be the case even in the event a secondary PM<sub>2.5</sub> NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. Kentucky has submitted a SIP revision for approval to satisfy the requirements of the CAA Section 169A, and the regional haze and best available retrofit technology rules contained in 40 CFR 51.308. This SIP revision is currently under review and will be acted on in a separate action. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate the Commonwealth's ability to implement PSD programs and to provide for visibility protection related to the 1997 8-hour ozone NAAQS when necessary.

12. *110(a)(2)(k) Air quality and modeling/data:* Kentucky conducts air quality modeling and reports the results of such modeling to EPA, as set forth in Kentucky Air Regulations Chapter 50:040—*Air quality models*. This regulation shows that ambient ozone monitoring is used, in conjunction with pre- and post-construction ambient air monitoring, to track local and regional scale changes in ozone concentrations. Additionally, Kentucky supports a

regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 1997 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, the Commonwealth's air quality regulations demonstrate that DAQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate the Commonwealth's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 1997 8-hour ozone NAAQS when necessary.

13. *110(a)(2)(L) Permitting fees:* Kentucky addresses the review of construction permits as previously discussed in 110(a)(2)(C) above. Permitting fees are collected through the Commonwealth's title V fees program, which has been federally approved. EPA has made the preliminary determination that Kentucky's SIP and practices adequately provide for permitting fees related to the 1997 8-hour ozone NAAQS when necessary.

14. *110(a)(2)(M) Consultation/participation by affected local entities:* The Kentucky DAQ coordinates with local governments affected by the SIP. More specifically, Kentucky adopted state-wide consultation procedures for the implementation of transportation conformity which includes the consideration of the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. EPA approved these procedures in Chapter 50:066 *Conformity of transportation plans, programs, and projects (Amendment)* on April 21, 2010 (75 FR 20180). Required partners covered by Kentucky's consultation procedures include federal, state and local transportation and air quality agency officials. The state and local transportation agency officials are most directly impacted by transportation conformity requirements and are required to provide public involvement for their activities including the analysis of how the Commonwealth meets transportation conformity requirements. Additionally, Chapter 65—*Mobile Source-Related Emissions* also discusses consultation related activities specifically related to mobile sources. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate consultation by affected

local entities related to the 1997 8-hour ozone NAAQS when necessary.

#### IV. Proposed Action

As described above, the Commonwealth of Kentucky has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Kentucky. EPA is proposing to approve Kentucky's infrastructure submission for the 1997 8-hour ozone NAAQS because this submission is consistent with section 110 of the CAA.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 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 approves 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 7, 2011.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2011-6260 Filed 3-16-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04OAR-2010-0722-201108; FRL-9282-5]

### Approval and Promulgation of Implementation Plans; Mississippi; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan (SIP), submitted by the State of Mississippi, through the Department of Environmental Quality (DEQ), as demonstrating that Mississippi meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone national ambient air quality standard (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an

"infrastructure" SIP. Mississippi certified that the Mississippi SIP contains provisions that ensure the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Mississippi (hereafter referred to as "infrastructure submission"). Mississippi's infrastructure submission, provided to EPA on December 7, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS.

**DATES:** Written comments must be received on or before April 18, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2010-0722, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

3. *Fax:* (404) 562-9140.

4. *Mail:* "EPA-R04-OAR-2010-0722," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2010-0722. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment