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REBECCA W. GOODMAN
SECRETARY

ANTHONY R. HATTON
COMMISSIONER

**ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601
TELEPHONE: 502-564-2150
TELEFAX: 502-564-4245

March 28, 2023

Daniel Blackman, Regional Administrator
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, GA 30303

Re: Comments relating to *Reconsideration of the National Ambient Air Quality Standards for Particulate Matter*; Docket ID: EPA-HQ-OAR-2015-0072; FRL-8635-01- OAR

Dear Mr. Blackman,

On behalf of the Commonwealth of Kentucky and the Energy and Environment Cabinet, the Division for Air Quality (Division) respectfully submits the following comments relating to the United States Environmental Protection Agency's (EPA) proposed action in the January 27, 2023 Federal Register, soliciting comments on the proposed *Reconsideration of the National Ambient Air Quality Standards for Particulate Matter*.¹

The Division requests that EPA withdraw the proposal and establish appropriate specific standards, based on technical rational and scientific basis, in a new rulemaking. Upon establishing a set standard, the Division recommends EPA re-propose the standard to allow for meaningful comment from all stakeholders.

The Division appreciates EPA's consideration of the attached comments. If you have questions or comments, please contact me at, Michael.Kennedy@ky.gov, at your convenience.

Sincerely,

Recoverable Signature

X Michael Kennedy

Signed by: Michael Kennedy

Michael Kennedy, P.E., Director
Kentucky Division for Air Quality

Attachment

¹ 88 Fed. Reg. 5,558 (Jan. 27, 2023).

Kentucky Comments regarding the January 27, 2023 proposed Reconsideration of the National Ambient Air Quality Standards for Particulate Matter

Retention of Current Standards

The Division for Air Quality (Division) believes the Environmental Protection Agency (EPA) should retain the current primary annual PM_{2.5} National Ambient Air Quality Standard (NAAQS) of 12.0 µg/m³. The Division supports EPA's proposal to retain the current primary 24-hour PM_{2.5} standard of 35 µg/m³. The Division also supports the proposal to retain the primary 24-hour PM₁₀ standard. The retention of the current secondary standards for both PM_{2.5} and PM₁₀ is also supported by the Division.

As outlined below, the Division believes EPA needs to withdraw the PM_{2.5} annual standard proposal and propose appropriate specific standards, based on technical rational and scientific basis, in a new rulemaking.

A Range is not a Proposal

EPA is proposing to revise the primary annual PM_{2.5} standard by lowering the current level from 12.0 µg/m³ to within the range of 9.0 to 10.0 µg/m³, while taking comment on alternative annual standard levels down to 8.0 µg/m³ and up to 11.0 µg/m³. In addition, EPA proposes to retain the primary 24-hour PM₁₀ standard, without revision; and, not to change the secondary PM standards in this proposal, while taking comment on revising the level of the secondary 24-hour PM_{2.5} standard as low as 25 µg/m³.

The Administrator also solicits public comment on alternative annual standard levels down to 8.0 µg/m³ and up to 11.0 µg/m³, on an alternative 24-hour standard level as low as 25 µg/m³ and on the combination of annual and 24-hour standards that commenters may believe is appropriate. The Division cannot possibly speculate what possible combinations of standards commenters may believe appropriate, and thus cannot begin to evaluate those.

The Division believes this range is too broad and EPA needs to set a numerical standard. A range is impossible to fully evaluate as there are an infinite number of possible standards within that range. The Division does not have the resources necessary to fully evaluate each possible standard within the proposed range. The Division requests that EPA withdraw the proposal and propose appropriate specific standards, based on a technical, rational and scientific basis, in a new rulemaking. Upon establishing a set standard, the Division recommends EPA repropose the standard to allow for meaningful comment from all stakeholders.

Additionally, proposing a range of standards is much more appropriate in an Advanced Notice of Proposed Rulemaking (ANPRM), not a reconsideration request. A reconsideration request should not be to take comments on options for new standards. The Division understands the Administrator's duty to periodically evaluate the NAAQS; however, more specific criteria should be proposed so that states, regulated entities and the public-at-large have a full opportunity to participate and provide meaningful comment.

Kentucky Comments regarding the January 27, 2023 proposed Reconsideration of the National Ambient Air Quality Standards for Particulate Matter

Based on 2020, 2021, and 2022 design values, the Division anticipates that the number of nonattainment areas at $9.0 \mu\text{g}/\text{m}^3$ is quadruple the number of areas in Kentucky that would be designated nonattainment with a standard of $10.0 \mu\text{g}/\text{m}^3$. Kentucky currently has no areas designated as nonattainment for the PM NAAQS. The significant increase in the number of areas that would be designated as nonattainment at $9.0 \mu\text{g}/\text{m}^3$ is of great concern. This is of critical importance because many of these counties have never before experienced the ramifications of a nonattainment designation. This first-time nonattainment designation will require training and education for both impacted sources and Division staff, especially as it relates to the regulatory and permitting requirements.

Furthermore, lowering the standard at this time is not necessary to achieve the desired outcomes because other federal programs that will lead to reduced emissions are currently being implemented. These federal measures should be given time to have effect prior to the burdens of nonattainment designations being imposed.

Moreover, the Division finds that EPA cannot finalize a standard outside of the proposed range of $9\text{-}10 \mu\text{g}/\text{m}^3$ regardless of the fact that EPA took comment on other options. This is inappropriate and a violation of the Administrative Procedure Act (APA) as EPA did not provide information to fully evaluate the possible standards outside of the $9\text{-}10 \mu\text{g}/\text{m}^3$ range. As part of the public comment period, the Division heard numerous presenters at the virtual public hearing comment that the standard needs to be finalized at $8 \mu\text{g}/\text{m}^3$; with some presenters even suggesting going as low as $5 \mu\text{g}/\text{m}^3$. The Division cautions that any final standard outside of the proposed range is not a logical outgrowth of this proposal and is inappropriate. If EPA decides to go outside the range of $9\text{-}10 \mu\text{g}/\text{m}^3$, the Division's contention is EPA must re-propose the standard to allow for full comment and participation in accordance with the requirements of the APA.

Similarly, EPA cannot finalize any changes to the primary 24-hour standard or the secondary standards for the same reasons.

Disregard for Economic Impacts

As previously discussed, a significant reduction of the current standard of $12.0 \mu\text{g}/\text{m}^3$ to $9.0 \mu\text{g}/\text{m}^3$ greatly increases the number of nonattainment areas in both Kentucky and the United States. One important impact to consider is that any standard more stringent than the current $12.0 \mu\text{g}/\text{m}^3$ is only going to exacerbate the problems in areas that are currently designated nonattainment. These areas are going to have to make more reductions, and likely pull in even more sources as the standard is lowered. This will add to the amount of time these areas need to come into attainment and can potentially impact the measures that are already in place to support the redesignation of these areas to attainment.

If the EPA Administrator, after the public comment period, decides to lower the primary annual $\text{PM}_{2.5}$ standard from $12.0 \mu\text{g}/\text{m}^3$ to $8.0 \mu\text{g}/\text{m}^3$ or lower and the secondary 24-hour standard from $35 \mu\text{g}/\text{m}^3$ to $25 \mu\text{g}/\text{m}^3$ or lower, it will pose a significant burden on the regulated community

Kentucky Comments regarding the January 27, 2023 proposed Reconsideration of the National Ambient Air Quality Standards for Particulate Matter

during a critical time of inflation. A more gradual step-down while balancing public health and welfare concerns with the needs of the economy is essential. This is especially true in light of all of the uncertainties and limitations cited by EPA in the Proposed Rule.

The NAAQS should not only consider direct health impacts, but EPA must also consider the negative impact to human health that decreased economic activity will have. If the standard were set at 9 $\mu\text{g}/\text{m}^3$, Bell County, Kentucky would be designated nonattainment. EPA should reach out to distressed communities for meaningful engagement.

Kentucky has a strong manufacturing and construction industry that will be negatively impacted by a more stringent PM_{2.5} standard. “In the United State (U.S.), the Recession disproportionately impacted already marginalized populations. Non-Hispanic blacks (NHB), Hispanics, and those with less than a college education suffered disproportionately high unemployment compared to other groups, due in part to their greater representation in the hard-hit construction and manufacturing industries.¹”

The manufacturing of electric vehicles will have a greater beneficial impact on air quality in the U.S. than any regulations or NAAQS standard proposed by EPA. EPA should consider the real scenario that lowering the NAAQS may hinder the construction and operations of these manufacturing facilities. Thus, creating a situation that is very costly for Kentucky and the U.S., while also having a negative environmental and human health impact.

Multiple studies² have shown that a downturn in the economy has a negative impact on human health³. This must be considered by EPA in finalizing a new PM_{2.5} standard. Kentucky’s current unemployment rate is higher than the national standard. The decreased economic activity in Kentucky, and across the U.S., due to a more stringent PM_{2.5} standard will lead to negative health impacts. These studies, and numerous others, are indicative there is clearly an impact to human health from an economic downturn. This should be considered by EPA during the rulemaking process, in order to ensure that distressed communities are not negatively impacted by any rule.

Other EPA rulemakings that have yet to take full effect will have major negative health and economic impacts to Kentucky. The Division urges EPA to consider retaining the current standard.

Meaningful Participation of States

The Division believes that multiple significant regulatory actions proposed simultaneously interferes with the ability for states to provide meaningful participation and comment to EPA.

¹ Margerison-Zilko C, Goldman-Mellor S, Falconi A, Downing J. Health Impacts of the Great Recession: A Critical Review. *Curr Epidemiol Rep*. 2016 Mar;3(1):81-91. doi: 10.1007/s40471-016-0068-6. Epub 2016 Feb 3. PMID: 27239427; PMCID: PMC4880023.

² [Failing Economy, Failing Health | Harvard Public Health Magazine | Harvard T.H. Chan School of Public Health](#)

³ <https://doi.org/10.1371/journal.pmed.1003319>

Kentucky Comments regarding the January 27, 2023 proposed Reconsideration of the National Ambient Air Quality Standards for Particulate Matter

EPA has produced multiple regulatory and non-regulatory dockets over the past several months, with overlapping comment periods. EPA has consistently stated their commitment to the co-regulator relationship with state level environmental protection agencies. However, that relationship is not working out in the practical realm. The number of dockets and timeframes that EPA is pursuing with its massive resources is making it very difficult for the Division to provide timely and important input. As a result, the Division has not been able to fully evaluate each proposed rulemaking due to limited staff resources in the time allotted by EPA.

Additionally, a proposed range inhibits the states from providing meaningful comment as there are simply too many possible scenarios for a final standard, and the states cannot predict what EPA will finalize.

Miscellaneous Comments

The Federal Equivalent Method (FEM) consistently reads higher than the Federal Reference Method (FRM). EPA must ensure that correction factors are considered at all monitors and in all area designations. These correction factors will be critical for air agencies during Prevention of Significant Deterioration and Nonattainment New Source Review modeling.

The Division does not support any changes to the Air Quality Index (AQI) as a part of this reconsideration. As previously discussed, it is inappropriate for EPA to take comment on a range, and the various changes to the AQI are too numerous to evaluate. The Division recommends EPA propose a numerical standard based on scientific evidence and simultaneously propose to adjust the AQI in relation to that standard.

The Division recommends EPA provide timely implementation guidance to states upon any final decision to revise the PM NAAQS. Timely guidance is necessary due to the expedited review for designations by the end of 2024.

The Division requests that EPA consider the resources necessary for state agencies related to ambient air monitoring. The Division will require more grant funding from EPA to expand the current PM monitoring network.