



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2011-0888; EPA-R05-OAR-2012-0991; FRL 9917-32-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Ohio; Infrastructure SIP Requirements for the 2008 Lead and 2010**

NO₂ NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of state implementation plan (SIP) submissions from Ohio regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 lead (Pb) and 2010 nitrogen dioxide (NO₂) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The proposed rulemaking associated with this final action was published on July 25, 2014, and EPA received no comments pertaining to infrastructure for the 2008 Pb or 2010 NO₂ NAAQS during the comment period, which ended on August 25, 2014. The 2008 ozone and 2010 SO₂ infrastructure SIPs were also addressed in the proposed rulemaking but will be addressed in a separate final rulemaking.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established dockets for this action under Docket ID No. EPA-R05-OAR-2011-0888 (2008 Pb infrastructure SIP elements) and Docket ID No. EPA-R05-OAR-2012-0991 (2010 NO₂ infrastructure SIP elements). All documents in the docket are listed in the www.regulations.gov index. 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, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra at (312) 886-9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9401, arra.sarah@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of these SIP submissions?

A. What state SIP submissions does this rulemaking address?

B. Why did the state make these SIP submissions?

C. What is the scope of this rulemaking?

II. What action is EPA taking?

III. Statutory and Executive Order Reviews.

I. What is the background of these SIP submissions?

A. What state SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the Ohio Environmental Protection Agency. The state submitted the infrastructure SIP for the 2008 Pb NAAQS on October 12, 2011, supplemented on June 7, 2013; and submitted the infrastructure SIP for the 2010 NO₂ NAAQS on February 8, 2013, supplemented on February 25, 2013 and June 7, 2013.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 Pb and 2010 NO₂ NAAQS. These submissions must contain any revisions needed for meeting the

applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA has highlighted this statutory requirement in multiple guidances, the most recent guidance document entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" on September 13, 2013.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submission from Ohio that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb and 2010 NO₂ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

A detailed rationale, history, and interpretation related to infrastructure SIP requirements can be found in our May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" (see 79 FR 27241 at 27242 - 27245).

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing

such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (collectively referred to as "director's discretion"); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has the authority to address each one of these substantive areas in separate rulemaking.

In addition, EPA is not acting on portions of section 110(a)(2)(J) - visibility protection for 2010 NO₂ and portions of Ohio's submission addressing the prevention of significant deterioration, sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and the prevention of significant deterioration (PSD) portion of (J) for 2008 Pb and 2010 NO₂. EPA is also not acting on section 110(a)(2)(I) - Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. The rationale for not acting on elements of these requirements was included in EPA's July 25, 2014 proposed rulemaking.

II. What action is EPA taking?

The proposed rulemaking associated with this final action was published on July 25, 2014 (79 FR 43338), and EPA received

no comments pertaining to infrastructure for 2008 Pb or 2010 NO₂ NAAQS during the comment period, which ended on August 25, 2014. The 2008 ozone and 2010 SO₂ infrastructure SIPs were also addressed in the proposed rulemaking but will be addressed in a separate final rulemaking.

For the reasons discussed in our proposed rulemaking and since no public comments were received, EPA is taking final action to approve, as proposed, Ohio's infrastructure SIPs for the 2008 Pb and 2010 NO₂ NAAQS. Our final actions by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Pb	2010 NO ₂
(A): Emission limits and other control measures	A	A
(B): Ambient air quality monitoring and data system	A	A
(C)1: Enforcement of SIP measures	A	A
(C)2: PSD program for Pb	NA	NA
(C)3: NOx as a precursor to ozone for PSD	NA	NA
(C)4: PM _{2.5} Precursors / PM _{2.5} and PM ₁₀ condensables for PSD	NA	NA
(C)5: PM _{2.5} Increments	NA	NA
(C)5: GHG permitting thresholds in PSD regulations	NA	NA
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A	A
(D)2: PSD	NA	NA
(D)3: Visibility Protection	A	NA
(D)4: Interstate Pollution Abatement	A	A
(D)5: International Pollution Abatement	A	A
(E): Adequate resources	A	A
(E): State boards	A	A
(F): Stationary source monitoring system	A	A
(G): Emergency power	A	A
(H): Future SIP revisions	A	A
(I): Nonattainment area plan or plan revisions under part D	NA	NA

(J)1: Consultation with government officials	A	A
(J)2: Public notification	A	A
(J)3: PSD	NA	NA
(J)4: Visibility protection	+	+
(K): Air quality modeling and data	A	A
(L): Permitting fees	A	A
(M): Consultation and participation by affected local entities	A	A

In the above table, the key is as follows:

A	Approve
NA	No Action / Separate Rulemaking
+	Not germane to infrastructure SIPs

III. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 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 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 (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, this 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.

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 **[INSERT DATE 60 DAYS**

AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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, Lead, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: September 22, 2014.

Susan Hedman,
Regional Administrator, Region 5.

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.*

2. Section 52.1891 is amended by adding paragraphs (e) and (f) to read as follows:

§ 52.1891 Section 110(a)(2) infrastructure requirements.

* * * * *

(e) Approval— In a October 12, 2011, submittal, supplemented on June 7, 2013, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 Lead NAAQS. We are not finalizing action on submissions addressing the prevention of significant deterioration requirements in sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and the prevention of significant deterioration (PSD) portion of (J).

(f) Approval— In a February 8, 2013 submittal, supplemented on February 25, 2013, and June 7, 2013, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2010 NO₂ NAAQS. We are not finalizing action on the visibility protection requirements of (D)(i)(II) or the prevention of significant deterioration requirements in sections 110(a)(2)(C),

(D) (i) (II), (D) (ii), and the prevention of significant deterioration (PSD) portion of (J).

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