



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2014-0629; FRL- 9917-69-Region-3]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Pennsylvania; State Boards Requirements**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Commonwealth of Pennsylvania State Implementation Plan (SIP). The SIP revision addresses the State Boards' requirements for all criteria pollutants of the National Ambient Air Quality Standards (NAAQS). EPA is also approving a related infrastructure element from Pennsylvania's September 24, 2012 SIP submittal for the 2008 Lead NAAQS. EPA is approving this SIP revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on **[insert date 60 days after publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2014-0629 by one of the following methods:

- A. [www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.

B. E-mail: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. Mail: EPA-R03-OAR-2014-0629, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2014-0629. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](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 information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website 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 [www.regulations.gov](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.

**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 [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the Commonwealth's submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Ruth Knapp, (215) 814-2191, or by email at [knapp.ruth@epa.gov](mailto:knapp.ruth@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 128 of the CAA requires SIPs to comply with the requirements regarding State Boards. Section 110(a)(2)(E)(ii) of the CAA also references these requirements. Section 128(a) of the CAA requires SIPs to contain provisions that: (1) Any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and (2) any potential conflict of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. The requirements of section 128(a)(1) are not applicable to Pennsylvania

because it does not have any board or body which approves air quality permits or enforcement orders. The requirements of section 128(a)(2), however, are applicable because the heads of the Pennsylvania Department of Environmental Protection (PADEP), the Allegheny County Health Department (ACHD), and Philadelphia Air Management Services (AMS), or their designees, approve permits or enforcement orders within Pennsylvania.

On July 15, 2014, the Commonwealth of Pennsylvania, through PADEP, submitted a SIP revision to address the requirements of sections 128 and 110(a)(2)(E)(ii) for all criteria pollutants of the NAAQS in relation to State Boards. This submission addressing sections 128 and 110(a)(2)(E)(ii) for all NAAQS was part of a larger SIP revision submitted on the same date which addresses requirements in section 110(a) for the 2008 ozone NAAQS; however, EPA will take later separate rulemaking action on the remainder of that July 15, 2014 SIP submission.

Previously, on September 24, 2012, Pennsylvania submitted a SIP revision to satisfy several requirements of section 110(a)(2) of the CAA for the 2008 Lead NAAQS. On April 7, 2014, EPA published a Final Rulemaking Notice in which EPA approved certain elements of Pennsylvania's SIP submittal for the 2008 Lead NAAQS and stated that EPA would take separate action on the submittal as it related to requirements in sections 110(a)(2)(E)(ii) and 128 of the CAA. 79 FR 19009.

## **II. Summary of SIP Revision**

This rulemaking action approves certain statutory provisions for the Pennsylvania SIP submitted by PADEP to meet the requirements of section 128 of the CAA. Upon meeting the requirements of section 128, Pennsylvania will also meet the requirements of section 110(a)(2)(E)(ii) of the CAA for all criteria pollutants of the NAAQS in relation to State Boards.

Pennsylvania's statutory provisions governing the relevant section 128 requirements are in Chapter 11 of the Pennsylvania Public Official and Employee Ethics Act (PA Ethics Act), found at 65 Pa.C.S. sections 1101-1109. The Secretary of PADEP and heads of ACHD and AMS, as well as the state employees subordinate to those positions, are subject to the requirements of Chapter 11 of the PA Ethics Act. In order to meet the requirements of CAA sections 128 and 110(a)(2)(E)(ii), Pennsylvania is seeking to incorporate into the SIP the relevant provisions of Chapter 11 of the PA Ethics Act, including certain relevant portions of sections 1101, 1102, 1104, 1105, and 1109. The Commonwealth's effective dates for these sections of Chapter 11 will be listed in the table in 40 CFR 52.2020(c).

### **III. EPA's Analysis of Pennsylvania's SIP Revision**

Sections 128 and 110(a)(2)(E)(ii) require that each state's SIP demonstrate how state boards, bodies or heads of executive agencies which approve CAA permits or enforcement orders disclose any potential conflicts of interest. The Secretary of PADEP and heads of ACHD and AMS, or their designees, approve all CAA permits and enforcement orders in Pennsylvania. All three agencies are executive agencies that act through their respective Secretary, head, or delegated subordinate state or local employees. Pennsylvania submitted relevant provisions of Chapter 11 of the PA Ethics Act for inclusion into the SIP as required by sections 128 and 110(a)(2)(E)(ii). Chapter 11 of the PA Ethics Act applies to public officials and employees and requires them to disclose relevant financial information including direct and indirect financial interests, income and gifts. This SIP revision will incorporate existing Pennsylvania law into the SIP and demonstrates that Pennsylvania complies with the requirements of sections 128 and 110(a)(2)(E)(ii) of the CAA for all NAAQS pollutants through the relevant sections of Chapter

11 of the PA Ethics Act for adequate disclosure of potential conflicts of interest.

#### **IV. Final Action**

EPA is approving the portion of the July 15, 2014 Pennsylvania SIP revision that addresses the requirements of sections 128 and 110(a)(2)(E)(ii) of the CAA for all criteria pollutants of the NAAQS. EPA is also specifically approving Pennsylvania's September 24, 2012 SIP revision for the 2008 Lead NAAQS as addressing the requirements in section 110(a)(2)(E)(ii) of the CAA. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on **[insert date 60 days from date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days from date of publication in the Federal Register]**. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **V. Statutory and Executive Order Reviews**

##### **A. General Requirements**

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.

#### **B. Submission to Congress and the Comptroller General**

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).

#### **C. Petitions for Judicial Review**

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 from date of publication of this document 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action, approving the Pennsylvania SIP revision for purposes of meeting sections 128 and 110(a)(2)(E)(ii) requirements for all criteria pollutants of the NAAQS in relation to State Boards, 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, Reporting and recordkeeping requirements.

Dated: September 23, 2014.

William C. Early, Acting  
Regional Administrator,  
Region III.

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 NN--Pennsylvania**

2. In § 52.2020:

a. The table in paragraph (c)(1) is amended by adding a new section for “Title 65 Pennsylvania Statute – Public Officers, Part II – Accountability, Chapter 11 – Ethics Standards and Financial Disclosure,” before the section for Title 67, with new entries for sections 1101, 1102, 1104, 1105, and 1109.

b. The table in paragraph (e)(1) is amended by revising the entry for “Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS.”

The additions and revisions read as follows:

**§ 52.2020 Identification of plan.**

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State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
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<b>Title 65 Pennsylvania Statute – Public Officers Part II - Accountability Chapter 11 – Ethics, Standards, and Financial Disclosure</b>				
Section 1101	Short title of chapter	12/14/98	[Insert date of Federal Register publication] [Insert	Addresses CAA section 128.

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
			<u>Federal Register citation]</u>	
Section 1102	Definitions	1/1/07	[ <u>Insert date of Federal Register publication]</u> [ <u>Insert Federal Register citation]</u>	Addresses CAA section 128.
Section 1104	Statement of financial interests required to be filed	12/14/98	[ <u>Insert date of Federal Register publication]</u> [ <u>Insert Federal Register citation]</u>	Addresses CAA section 128.
Section 1105	Statement of financial interests	1/1/07	[ <u>Insert date of Federal Register publication]</u> [ <u>Insert Federal Register citation]</u>	Addresses CAA section 128.
Section 1109	Penalties	12/14/98	[ <u>Insert date of Federal Register publication]</u> [ <u>Insert Federal Register citation]</u>	Addresses CAA section 128.
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