



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2015-0824; FRL-9952-42-Region 5]

**Air Plan Approval; Ohio; Infrastructure SIP Requirements for the
2012 PM_{2.5} NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of the state implementation plan (SIP) submission from Ohio regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter (PM_{2.5}) 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 rule associated with this final action was published on June 23, 2016, and we received no comments.

DATES: This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2015-0824. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available,

i.e., Confidential Business Information (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 through www.regulations.gov or at the 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 Joseph Ko, Environmental Engineer, at (312) 886-7947 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Joseph Ko, Environmental Engineer, Attainment Planning and Maintenance, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7947, ko.joseph@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 Did Ohio Submit, and what is the Scope of EPA's Action?
- II. What Action is EPA Taking?
- III. Statutory and Executive Order Reviews.

I. What Did Ohio Submit, and what is the Scope of EPA's Action?

A. What state SIP submission does this rulemaking address?

This rulemaking addresses a submission from the Ohio Environmental Protection Agency (OEPA), describing its infrastructure SIP for the 2012 PM_{2.5} NAAQS, dated December 4, 2015.

B. Why did the state make this SIP submission?

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 2012 PM_{2.5} 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 highlighted this statutory requirement in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards" (2007 Memo) and has issued additional guidance documents, the most recent on September 13, 2013, "Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and (2)" (2013 Memo). The SIP submission referenced in this rulemaking pertains to the applicable requirements of section

110(a)(1) and (2), and addresses the 2012 PM_{2.5} NAAQS. To the extent that the prevention of significant deterioration (PSD) program is non-NAAQS specific, a narrow evaluation of other aspects of Ohio's submittal pertinent to the NAAQS will be included in the appropriate sections.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submission from OEPA that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 PM_{2.5} NAAQS. The requirement for states to make a SIP submission of this type is in 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.

This rulemaking will not cover four 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 ("director's discretion"); (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final New

Source Review (NSR) Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"); and (iv) transport provisions under section 110(a)(2)(D). Instead, EPA has the authority to, and plans to, address each one of these substantive areas in separate rulemakings. A detailed history and interpretation of infrastructure SIP requirements can be found in EPA's 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).

II. What Action is EPA Taking?

EPA is approving most elements of the submission from OEPA certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2012 PM_{2.5} NAAQS. The proposed rulemaking associated with this final action was published on June 23, 2016 (81 FR 40827), and EPA received no comments during the comment period, which ended on July 25, 2016. For the reasons discussed in the proposed rulemaking, EPA is therefore taking final action to approve most elements, as proposed, of Ohio's submissions. EPA's final actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

Element	2012
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	PM_{2.5}
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C): Program for enforcement of control measures	A
(D)1: Interstate Transport- Significant contribution	NA
(D)2: Interstate Transport- interfere with maintenance	NA
(D)3: PSD	A
(D)4: Visibility	NA
(D)5: Interstate and International Pollution Abatement	A
(E): Adequate resources	A
(E): State boards	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)1: Consultation with government officials	A
(J)2: Public notification	A
(J)3: PSD	A
(J)4: Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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, 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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,
Particulate matter, Reporting and recordkeeping requirements.

Dated: August 30, 2016.

Robert A. Kaplan,
Acting 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. In § 52.1870, the table in paragraph (e) is amended by adding an entry for "Section 110(a)(2) Infrastructure Requirements for the 2012 PM_{2.5} NAAQS" after the entry "Section 110(a)(2) infrastructure requirements for the 2006 PM_{2.5} NAAQS" under "Infrastructure Requirements" to read as follows:

§ 52.1870 Identification of plan.

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(e) * * *

EPA--APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
* * * * *				
Infrastructure Requirements				
* * * * *				
Section 110(a)(2) infrastructure requirements for the 2012 PM _{2.5} NAAQS	Statewide	12/2/2015	[insert the date of publication in the Federal Register], [Insert Federal Register citation]	Addresses the following CAA elements: 110(a)(2)(A)-(C), (D)(iii), (D)(v), (E)-(H), (J)(i), (J)(ii), (J)(iii), (K)-(M)
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[FR Doc. 2016-22360 Filed: 9/16/2016 8:45 am; Publication Date: 9/19/2016]