



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2009-0805; FRL-9906-32-Region 5]

Approval of Air Quality Implementation Plans; Indiana; Ohio;

"Infrastructure" SIP State Board Requirements for the 2006

24-Hour PM_{2.5} NAAQS.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to approve elements of state implementation plan (SIP) submissions by the Indiana Department of Environmental Management (IDEM) and the Ohio Environmental Protection Agency (Ohio EPA) to address the section 110 requirements of the CAA for the 2006 24-hour fine particle national ambient air quality standards (2006 PM_{2.5} NAAQS). The SIPs under section 110 of the CAA are often referred to as the "infrastructure" SIP, and specifically we are proposing approval of portions of these states' submissions intended to meet the state board requirements of section 110. This section requires states to comply with the applicable state board requirements found in section 128 of the CAA.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0805, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
 2. E-mail: aburano.douglas@epa.gov.
 3. Fax: (312) 408-2279.
 4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
 5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.
- Instructions:* Direct your comments to Docket ID. EPA-R05-OAR-2009-0805. 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, 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 or e-mail. The 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 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 docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI 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 Andy Chang, Environmental Engineer, at (312) 886-0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, 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) 886-0258, chang.andy@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 for this action?
- II. What is the result of EPA's review of the applicable state board requirements for Indiana and Ohio?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews.

I. What is the background for this action?

Under sections 110(a)(1) and (2) of the CAA, and implementing EPA policy, states are required to submit to EPA infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2006 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 already met 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). On September 25, 2009, EPA issued additional guidance pertaining to the 2006 PM_{2.5} NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)" (2009 Memo).

On October 29, 2012, EPA finalized its approval of the majority of the infrastructure SIP elements for Indiana and Ohio with respect to the 2006 PM_{2.5} NAAQS (see 77 FR 65478). However, we took no action on the state board requirements of section 110(a)(2)(E)(ii); instead, we committed to address compliance with these requirements at a later time (see 77 FR 65478 at

75480). Today's proposed rulemaking and future final action are intended to fulfill that commitment.

To assist states with addressing the state board requirements of section 110(a)(2)(E)(ii), EPA issued "Guidance on infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)" (2011 Memo) and most recently, "Guidance on Infrastructure SIP Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)" (2013 Memo). Notably, the 2013 Memo specifies that the state board requirements are not NAAQS specific, i.e., the requirements are identical for each NAAQS. Today's rulemaking describes how Indiana and Ohio have met the applicable state board requirements under section 110(a)(2)(E)(ii) for the 2006 PM_{2.5} NAAQS; this rulemaking does not address any other NAAQS, nor does it extend to any other infrastructure SIP element of the 2006 PM_{2.5} NAAQS.

II. What is the result of EPA's review of the applicable state board requirements for Indiana and Ohio?

Integral to the infrastructure SIP requirements for IDEM and Ohio EPA with respect to the state board requirements for the 2006 PM_{2.5} NAAQS was the need for these two states to show that they had met the applicable requirements contained in section 128 of the CAA, and for the states to submit such provisions for incorporation into the SIP.

Under section 128 of the CAA, each SIP must contain provisions that address two requirements: (i) that any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. IDEM's and Ohio EPA's satisfaction of these requirements follow, below.

On August 19, 2013, EPA proposed approval of IDEM's provisions intended to address the applicable requirements of section 128 (see 78 FR 50360). No comments were received regarding our proposed approval of Indiana's state board provisions, and EPA's final approval of these provisions was published on December 24, 2013 (see 78 FR 77599). IDEM had previously requested in a May 22, 2013, SIP submission that EPA's approval of its state board provisions satisfy any applicable infrastructure SIP requirements for the 2006 PM_{2.5} NAAQS. EPA therefore proposes that Indiana has met the section 110(a)(2)(E)(ii) requirements for the 2006 PM_{2.5} NAAQS.

On June 7, 2013, Ohio submitted a SIP revision clarifying that the state does not have a board that has the authority to

approve enforcement orders or permitting actions as outlined in section 128(a)(1) of the CAA; instead, this authority rests with the Director of Ohio EPA. Therefore, section 128(a)(1) of the CAA is not applicable in Ohio.

Under section 128(a)(2), the head of the executive agency with the power to approve enforcement orders or permits must adequately disclose any potential conflicts of interest. In its June 7, 2013, submission, Ohio EPA noted that EPA has previously approved provisions into Ohio's SIP addressing these requirements (see 46 FR 57490). Specifically, ORC 102: Public Officers - Ethics contains provisions that require the Director of Ohio EPA (and his/her delegate) to file an annual statement with the ethics committee including potential conflicts of interest; furthermore, this annual filing is subject to public inspection. Ohio EPA requested in its June 7, 2013, submission that these SIP-approved provisions satisfy any applicable infrastructure SIP requirements for the 2006 PM_{2.5} NAAQS. EPA therefore proposes that Ohio has met the applicable requirements for section 110(a)(2)(E)(ii) for the 2006 PM_{2.5} NAAQS.

III. What action is EPA taking?

For the reasons discussed above, EPA is proposing to approve submissions from IDEM and Ohio intended to address the state board requirements under section 110(a)(2)(E)(ii) for the 2006 PM_{2.5} NAAQS. To reiterate, this action does not extend to

any other NAAQS, nor does it extend to any other element under section 110(a)(1) and (2) for the 2006 PM_{2.5} NAAQS.

VI. 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements.

Dated: January 22, 2014.

Susan Hedman,
Regional Administrator, Region 5.

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