



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2014-0720; A-1-FRL-9952-94-Region 1]

Air Plan Approval; MA; Infrastructure State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving most elements of State Implementation Plan (SIP) submissions from Massachusetts regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 1997 ozone, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO₂), and 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). EPA is also conditionally approving three aspects of the Commonwealth's submittals. In addition, we are also making findings of failure to submit pertaining to various aspects of the prevention of significant deterioration (PSD) requirements of infrastructure SIPs. Lastly, we are removing 40 CFR 52.1160 as legally obsolete. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2014-0720. All documents in the docket are listed on the <http://www.regulations.gov> web site. 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 at <http://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Environmental Engineer, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1046; mcconnell.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. The term “the Commonwealth” refers to the state of Massachusetts.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Final Action

III. Incorporation by Reference

IV. Statutory and Executive Order Reviews

I. Background and Purpose

On July 20, 2016 (81 FR 47133), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Massachusetts which proposed approval of most elements of SIP submissions from the Commonwealth regarding the infrastructure requirements of the CAA for the 1997 ozone, 2008 lead, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, proposed to conditionally approve three aspects of the Commonwealth's submittals, and proposed findings of failure to submit pertaining to various aspects of the PSD requirements of infrastructure SIPs. Additionally, we proposed to remove 40 CFR 52.1160 as legally obsolete. The Commonwealth submitted its infrastructure State Implementation Plan (ISIP) for the 1997 ozone NAAQS on December 14, 2007, its ISIP for the 2008 Pb NAAQS on December 4, 2012, and its ISIPs for the 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS on June 6, 2014.

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 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ 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. Table 1 below provides a summary of the actions we are taking on the various portions of the Commonwealth's infrastructure submittals.

Table 1: Final action on MA infrastructure SIP submittals for various NAAQS

| Element | 1997 Ozone | 2008 Pb | 2008 Ozone | 2010 NO ₂ | 2010 SO ₂ |
|---|---------------|------------|---------------|-------------------------|-------------------------|
| (A): Emission limits and other control measures | CA | CA | CA | CA | CA |
| (B): Ambient air quality monitoring and data system | A | A | A | A | A |
| (C)(i): Enforcement of SIP measures | A | A | A | A | A |
| (C)(ii): PSD program for major sources and major modifications | PF | PF | PF | FS | FS |
| (C)(iii): Permitting program for minor sources and minor modifications | A | A | A | A | A |
| (D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2) | NI | A | NS | A | NS |
| (D)(i)(II): PSD (prong 3) | PF/CA | PF/CA | PF/CA | FS/CA | FS/CA |
| (D)(i)(II): Visibility Protection (prong 4) | A | A | A | A | A |
| (D)(ii): Interstate Pollution Abatement | PF | PF | PF | FS | FS |
| (D)(ii): International Pollution Abatement | A | A | A | A | A |
| (E)(i): Adequate resources | A | A | A | A | A |
| (E)(ii): State boards | A | A | A | A | A |
| (E)(iii): Necessary | NA | NA | NA | NA | NA |

| | | | | | |
|--|----|----|----|----|----|
| assurances with respect to local agencies | | | | | |
| (F): Stationary source monitoring system | A | A | A | A | A |
| (G): Emergency power | CA | A | CA | A | CA |
| (H): Future SIP revisions | A | A | A | A | A |
| (I): Nonattainment area plan or plan revisions under part D | + | + | + | + | + |
| (J)(i): Consultation with government officials | FS | FS | FS | FS | FS |
| (J)(ii): Public notification | A | A | A | A | A |
| (J)(iii): PSD | PF | PF | PF | FS | FS |
| (J)(iv): Visibility protection | + | + | + | + | + |
| (K): Air quality modeling and data | A | A | A | A | A |
| (L): Permitting fees | A | A | A | A | A |
| (M): Consultation and participation by affected local entities | A | A | A | A | A |

In the above table, the key is as follows:

| | |
|----|--|
| A | Approve |
| CA | Conditional approval |
| FS | Finding of failure to submit |
| NA | Not applicable |
| NI | Not included in submittal we are acting on in today's action |
| NS | No Submittal |
| PF | Prior finding of failure to submit |
| + | Not germane to infrastructure SIPs |

The specific requirements of ISIPs and the rationale for EPA's proposed actions on the Commonwealth's submittals are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. FINAL ACTION

EPA is approving most portions of Massachusetts ISIP submittals for the 1997 ozone, 2008 lead, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS as outlined within Table 1 of this final rulemaking.

Additionally, EPA is conditionally approving three portions of these submittals. First, for the five NAAQS listed within Table 1 we are conditionally approving an aspect of the Commonwealth's submittals for element 110(a)(2)(A) pertaining to ambient air quality standards because the current, SIP-approved version of 310 CMR 7.00, *Air Pollution Control*, does not reflect the current version of the various NAAQS we are taking action on in this rulemaking. However, by letter dated June 14, 2016, the Commonwealth committed to rectify this deficiency by adding a definition of NAAQS to 310 CMR 7.00 that includes a calendar date to address this issue. Therefore, EPA is conditionally approving this SIP revision. Second, we are conditionally approving the Commonwealth's submittals for element 110(a)(2)(G) pertaining to contingency plans for the 1997 ozone, 2008 ozone, and 2010 SO₂ NAAQS pursuant to Massachusetts commitment within their June 14, 2016 letter to submit a regulation meeting the contingency plan requirement of element 110(a)(2)(G). And last, we are conditionally approving the aspect of 110(a)(2)(D)(i)(II) for the five NAAQS listed within Table 1 pertaining to the Commonwealth's Nonattainment New Source Review (NNSR) program pursuant to the state's

June 14, 2016 letter committing to submit portions of 310 CMR 7.00: *Appendix A*, to EPA as a SIP revision request. Massachusetts must make the above mentioned submittals to EPA by a date no later than one year from EPA's final action on these infrastructure SIPs. If the Commonwealth fails to do so, this approval will become a disapproval on that date, and we will notify Massachusetts by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Massachusetts SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitments within the applicable time frame, the conditionally approved submissions will remain a part of the SIP until EPA takes final action approving or disapproving the new legislative authority. If EPA disapproves the new submittal, these conditionally approved aspects of the Commonwealth's ISIPs will also be disapproved at that time. If EPA approves the Commonwealth's submittals, they will be fully approved in their entirety and replace the conditionally approved items in the Massachusetts SIP. If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

As noted within Table 1 of this final rulemaking notice, we are also making findings of failure to submit for the aspects of the Commonwealth's ISIPs noted within CAA sections 110(a)(2)(C)(ii), (D)(i)(II), (D)(ii), J(i), and J(iii). These findings relate to inadequacies with Massachusetts' program for the prevention of significant deterioration (PSD), and are elaborated on within our July 20, 2016 NPR. As mentioned in our proposed rulemaking, the Commonwealth is subject to a PSD Federal Implementation Plan (FIP), and has implemented and enforced the federal PSD program through a delegation agreement. See 76 FR 31241; May 31, 2011. Therefore, our findings of failure to submit will not trigger any additional FIP

obligation by the EPA under section 110(c)(1), because the deficiency is addressed by the FIP already in place. Moreover, the state is not subject to mandatory sanctions solely as a result of this finding, because the SIP submittal deficiencies are neither with respect to a sub-element that is required under part D nor in response to a SIP call under section 110(k)(5) of the Act.

Furthermore, as proposed, we are incorporating into the Massachusetts SIP sections 6 and 6A of the state's Conflict of Interest law, which the Commonwealth submitted on June 6, 2014, and are removing 40 CFR 52.1160 regarding Massachusetts Low Emission Vehicle program in that this section is legally obsolete.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of M.G.L c. 268A, sections 6 and 6A of the Commonwealth's Conflict of Interest law submitted to EPA on June 6, 2014, as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <http://www.regulations.gov>.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. 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 Clean Air Act; 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 Clean Air Act, 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. 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, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 13, 2016.

H. Curtis Spalding
Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 – APPROVAL AND PROMULGATION OF AIR QUALITY
IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart W - Massachusetts

2. Section 52.1119 is amended by adding paragraphs (a)(3) through (5) to read as follows:

§ 52.1119 Identification of plan-conditional approval

* * * * *

(a) * * *

(3) Massachusetts submitted an infrastructure State Implementation Plan (ISIP) for the 1997 ozone national ambient air quality standard (NAAQS) on December 14, 2007, submitted an ISIP for the 2008 Pb NAAQS on December 4, 2012, and submitted ISIPs for the 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS on June 6, 2014. On June 14, 2016, Massachusetts submitted a letter committing to add a definition of NAAQS to Massachusetts regulation 310 CMR 7.00, and to submit the amended version of this regulation to EPA as a SIP revision request, by a date no later than one year from the effective date of EPA’s actions on these ISIPs. In light of this commitment, the portion of the Commonwealth’s ISIP submittals mentioned above made to address Clean Air Act section 110 (a)(2)(A), Emission limits and other control measures, is conditionally approved.

(4) Massachusetts submitted an infrastructure State Implementation Plan (ISIP) for the 1997 ozone national ambient air quality standard (NAAQS) on December 14, 2007, submitted an

ISIP for the 2008 Pb NAAQS on December 4, 2012, and submitted ISIPs for the 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS on June 6, 2014. On June 14, 2016, Massachusetts submitted a letter committing to submit portions of 310 CMR 7.00: Appendix A: Emission Offsets and Nonattainment Review, to EPA as a SIP revision request, by a date no later than one year from the effective date of EPA’s actions on these ISIPs. In light of this commitment, the portions of the Commonwealth’s ISIP submittals mentioned above made to address Clean Air Act section 110 (a)(2)(D)(i)(II), PSD, is conditionally approved.

(5) Massachusetts submitted an infrastructure State Implementation Plan (ISIP) for the 1997 ozone national ambient air quality standard (NAAQS) on December 14, 2007, and submitted ISIPs for the 2008 ozone and 2010 SO₂ NAAQS on June 6, 2014. On June 14, 2016, Massachusetts submitted a letter committing to submit 310 CMR 8.00, The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies, to EPA as a SIP revision request, by a date no later than one year from the effective date of EPA’s actions on these ISIPs. In light of this commitment, the portions of the Commonwealth’s ISIP submittals mentioned above made to address Clean Air Act section 110 (a)(2)(G), Emergency power, is conditionally approved.

3. Section 52.1120 is amended by adding paragraphs (c)(145) through (147) to read as follows:

§ 52.1120 Identification of plan

* * * * *

(c) * * *

(145) Revisions to the State Implementation Plan (SIP) submitted by the Massachusetts Department of Environmental Protection on December 14, 2007. The submittal consists of an Infrastructure SIP for the 1997 ozone national ambient air quality standard.

(146) Revisions to the State Implementation Plan (SIP) submitted by the Massachusetts Department of Environmental Protection on December 4, 2012. The submittal consists of an Infrastructure SIP for the 2008 lead national ambient air quality standard.

(147) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on June 6, 2014. The submittal consists of Infrastructure SIPs for the 2008 ozone, 2010 NO₂, and 2010 SO₂ national ambient air quality standards.

(i) Incorporation by reference.

(A) Section 6, “Financial interest of state employee, relative, or associates; disclosure,” of the Massachusetts General Laws Annotated, chapter 268A, “Conduct of Public Officials and Employees,” as amended by Statute 1978, chapter 210, § 9.

(B) Section 6A, “Conflict of interest of public officials; reporting requirement,” of the Massachusetts General Laws Annotated, chapter 268A, “Conduct of Public Officials and Employees,” as amended by Statute 1984, chapter 189, § 163.

§ 52.1160 [Removed and Reserved]

4. Section 52.1160 is removed and reserved.

5. In § 52.1167, Table 52.1167 is amended by adding a state citation for conflict of interest law at the end of the table to read as follows:

§ 52.1167 - EPA-approved Massachusetts State regulations.

* * * * *

Table 52.1167 - EPA-Approved Rules and Regulations

[See Notes at end of Table]

| State citation | Title/subject | Date submitted by State | Date approved by EPA | Federal Register citation | 52.1120(c) | Comments/unapproved sections |
|-----------------------------------|---|--------------------------------|---|---|-------------------|---|
| * | * | * | * | * | * | * |
| M.G.L. c. 268A, sections 6 and 6A | Conduct of Public Officials and Employees | June 6, 2014 | [Insert Federal Register date of publication date] | [Insert Federal Register citation] | 147 | Approved Section 6: Financial interest of state employee, relative or associates; disclosure, and Section 6A: Conflict of interest of public official; reporting requirement. |
| | | | | | | |

Notes:

1. This table lists regulations adopted as of 1972. It does not depict regulatory requirements which may have been part of the Federal SIP before this date.
2. The regulations are effective statewide unless otherwise stated in comments or title section.

[FR Doc. 2016-30466 Filed: 12/20/2016 8:45 am; Publication Date: 12/21/2016]