



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2017-0477; FRL-9967-95-Region 7]

Approval of Nebraska Air Quality Implementation Plans;

**Infrastructure SIP Requirements for the 2010 Nitrogen Dioxide
and Sulfur Dioxide and the 2012 Fine Particulate Matter National
Ambient Air Quality Standards**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve elements of a State Implementation Plan (SIP) submission from the State of Nebraska addressing the applicable requirements of Clean Air Act (CAA) section 110 for the 2010 Nitrogen Dioxide (NO₂) and Sulfur Dioxide (SO₂) National Ambient Air Quality Standards (NAAQS), and the 2012 Fine Particulate Matter (PM_{2.5}) NAAQS, which requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as "infrastructure" SIPs. 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.

DATES: This direct final rule will be effective [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], without further notice, unless EPA receives adverse comment by [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2017-0477 to <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general

guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7391, or by email at crable.gregory@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. What Action is EPA Taking?
- IV. Statutory and Executive Order Reviews

I. What is Being Addressed in this Document?

EPA is taking direct final action to approve the infrastructure submissions as meeting the submittal requirement section 110(a)(1). EPA is approving elements of the 2010 NO₂ and SO₂ infrastructure SIP submissions from the State of Nebraska received on February 7, 2013, and August 22, 2013, respectively. EPA is also taking action to approve the 2012 PM_{2.5} infrastructure submittal received on February 22, 2016. Specifically, EPA is approving, in regard to the 2010 NO₂ NAAQS,

the following elements of section 110(a)(2): (A) through (C), (D)(i)(I)- Prongs 1 and 2, (D)(i)(II)- prong 3, (D)(ii), (E) through (H), and (J) through (M).

In regard to the 2010 SO₂ and 2012 PM_{2.5} NAAQS, EPA is approving the following infrastructure elements of 110(a)(2): (A) through (C), (D)(i)(II) - Prong 3, (D)(ii), (E) through (H), and (J) through (M). As discussed in the TSD, EPA is not acting, at this time, on section 110(a)(2)(D)(i)(I)- prongs 1 and 2, as it relates to the 2010 SO₂ and 2012 PM_{2.5} NAAQS.

In regard to the 2010 NO₂ and SO₂ and the 2012 PM_{2.5} infrastructure submittals and as explained in the TSD, EPA is not acting, at this time, on section(D)(i)(II) - prong 4. Finally, EPA is not acting on section 110(a)(2)(I) as it does not expect infrastructure SIP submissions to address element (I).

As noted, a Technical Support Document (TSD) is included as part of the docket to discuss the details of this action.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The state submissions have met the public notification requirements for SIP submissions in accordance with 40 CFR 51.102. A public comment period was held for the NO₂ infrastructure SIP from December 27, 2012 to January 28, 2013.

The only comments were from the EPA, and the infrastructure SIP submission was revised to address the comments. A public hearing was held on January 28, 2013.

The state held a public comment period for the SO₂ infrastructure SIP from April 25, 2013, to May 28, 2013. NDEQ received comments from the Sierra Club on May 28, 2013. The state addressed the Sierra Clubs comments with no revisions to its proposed SIP. A public hearing was held on May 27, 2013.

A public comment period was held for the PM_{2.5} infrastructure SIP from November 23, 2015, to December 29, 2015. A public hearing was held on December 29, 2015. No comments were received.

All three submissions satisfied the completeness criteria of 40 CFR part 51, appendix V. As explained in more detail in the TSD, which is part of this docket, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What Action is EPA Taking?

EPA is approving the infrastructure SIP submissions from Nebraska, which address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2010 NO₂ and SO₂ and 2012 PM_{2.5} NAAQS. As stated in the above preamble, EPA is approving elements of the state's submission as meeting requirements of section 110(a)(1) for all three submittals.

With regard to the 2010 NO₂ NAAQS, EPA is approving the following infrastructure elements of 110(a)(2): (A) through (C), (D) (i) (I)- Prongs 1 and 2, (D) (i) (II) - prong 3, (D) (ii), (E) through (H), and (J) through (M). As explained in the TSD, EPA intends to act on section (D) (i) (II) - prong 4, in a subsequent rulemaking.

EPA is approving the following infrastructure elements of 110(a)(2) as it relates to the 2010 SO₂ and the 2012 PM_{2.5} NAAQS: (A) through (C), (D) (i) (II) - Prong 3, (D) (ii), (E) through (H), and (J) through (M). As discussed in the TSD, EPA intends to act on section (D) (i) (II) - prong 4, in a subsequent rulemaking and is not acting, at this time, on section 110(a)(2) (D) (i) (I)- prongs 1 and 2, for both the 2010 SO₂ and 2012 PM_{2.5} NAAQS.

Finally, EPA is taking no action with respect to section 110(a)(2) (I) for the 2010 NO₂ and SO₂ NAAQS, and the 2012 PM_{2.5} NAAQS. Section 110(a)(2) (I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas. EPA does not expect infrastructure SIP submissions to address element (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are

subject to different submission schedules than those for section 110 infrastructure elements. EPA takes action on part D attainment plan SIP submissions through separate rulemaking governed by the requirements for nonattainment areas, as described in part D. EPA has not designated any area in the U.S. as nonattainment for the 2010 NO₂ NAAQS; EPA has designated all areas of Nebraska as "attainment/unclassified" with regards to the 2012 PM_{2.5} NAAQS. Additionally, EPA has designated Lincoln and Otoe Counties as "attainment/unclassified" for the 2010 1-hr SO₂ NAAQS, but has not yet made a final determination for the rest of the Nebraska as it relates to the 2010 SO₂ NAAQS. Nebraska has no current CAA requirement to submit a plan to address section 110(a)(2)(I).

Based upon review of the state's infrastructure SIP submissions for the 2010 NO₂ and SO₂ NAAQS as well as the 2012 PM_{2.5} NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submissions or referenced in Nebraska's SIP, EPA believes that Nebraska has the infrastructure to address all applicable required elements of sections 110(a)(1) and (2) (except otherwise noted) to ensure that the 2010 NO₂ and SO₂ NAAQS and the 2012 PM_{2.5} NAAQS are implemented in the state.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to this action partially approving elements of section 110(a)(2) for the 2010 NO₂ and SO₂ NAAQS and the 2012 PM_{2.5} NAAQS, if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

IV. Statutory and Executive Order Reviews

Under the CAA, 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 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).

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. section 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated:

September 8, 2017.

Cathy Stepp,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

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 CC—Nebraska

2. Amend § 52.1420(e) by adding entries “(32)”, “(33)” and “(34)” in numerical order to read as follows:

§ 52.1420 Identification of Plan.

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(e) * * *

EPA-APPROVED NEBRASKA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* * * * *				
(32) Section 110(a)(2) Infrastructure Requirements for the 2010 NO ₂ NAAQS	Statewide	2/7/13	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	[EPA-R07-OAR-2017-0477; FRL-9967-95-Region 7]. This action addresses the following CAA elements 110(a)(2) (A) through (C), (D) (i) (I)- Prongs 1 and 2, (D) (i) (II)- prong 3, (D) (ii), (E) through (H), and (J) through (M).
(33) Section 110(a)(2) Infrastructure Requirements for the 2010 SO ₂ NAAQS	Statewide	8/22/13	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	[EPA-R07-OAR-2017-0477; FRL-9967-95-Region 7]. This action addresses the following CAA elements 110(a)(2) (A) through (C), (D) (i) (II) - Prong 3, (D) (ii), (E) through (H), and (J) through (M).

(34) Section 110(a)(2) Infrastructure Requirements for the 2010 PM _{2.5} NAAQS	Statewide	2/22/16	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal</u> <u>Register</u> citation]	[EPA-R07-OAR-2017-0477; FRL-9967-95-Region 7]. This action addresses the following CAA elements 110(a)(2) (A) through (C), (D) (i) (II) - Prong 3, (D) (ii), (E) through (H), and (J) through (M).
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