



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0759; FRL-9972-35-Region 5]

**Air Plan Approval; Ohio; Regional Haze Plan and Prong 4
(Visibility) for the 2012 and 2006 PM_{2.5}, 2010 NO₂, 2010 SO₂, and
2008 Ozone NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to take action under the Clean Air Act (CAA) on an Ohio State Implementation Plan (SIP) submittal addressing regional haze. This proposed action is based on a final determination by EPA that a state's participation in the Cross-State Air Pollution Rule (CSAPR) program continues to meet the Regional Haze Rule (RHR)'s criteria to qualify as an alternative to the application of Best Available Retrofit Technology (BART). EPA is proposing the following five actions: approve the portion of Ohio's November 30, 2016 SIP submittal seeking to change reliance from the Clean Air Interstate Rule (CAIR) to CSAPR for certain regional haze requirements; convert EPA's limited approval/limited disapproval of Ohio's March 11, 2011 regional haze SIP to a full approval; withdraw the Federal Implementation Plan (FIP) provisions that address the limited disapproval;

approve the visibility prong of Ohio's infrastructure SIP submittals for the 2012 annual and 2006 24-hour fine particulate matter (PM_{2.5}), 2010 nitrogen dioxide (NO₂), and 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS); and convert EPA's disapproval of the visibility portion of Ohio's infrastructure SIP submittal for the 2008 ozone NAAQS to an approval.

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-2016-0759 at <http://www.regulations.gov> or via email to Aburano.Douglas@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, 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, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regional Haze SIPs and Their Relationship with CAIR and CSAPR

Section 169A(b)(2)(A) of the CAA requires states to submit regional haze SIPs that contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977

procure, install, and operate BART as determined by the state. Under the RHR, states are directed to conduct BART determinations for such "BART-eligible" sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. See 40 CFR 51.308(e)(2). EPA provided states with this flexibility in the RHR, adopted in 1999, and further refined the criteria for assessing whether an alternative program provides for greater reasonable progress in two subsequent rulemakings. See 64 FR 35714 (July 1, 1999); 70 FR 39104 (July 6, 2005); 71 FR 60612 (October 13, 2006).

In revisions to the regional haze program made in 2005, EPA demonstrated that CAIR would achieve greater reasonable progress than BART.¹ See 70 FR 39104. In those revisions, EPA amended its regulations to provide that states participating in the CAIR cap-and-trade programs pursuant to an EPA-approved CAIR SIP, or states that remain subject to a CAIR FIP need not require affected BART-eligible electric generating units (EGUs) to

¹ CAIR created regional cap-and-trade programs to reduce SO₂ and NO_x emissions in 27 eastern states (and the District of Columbia), including Ohio, that contributed to downwind nonattainment or interfered with maintenance of the 1997 8-hour ozone NAAQS or the 1997 PM_{2.5} NAAQS.

install, operate, and maintain BART for emissions of SO₂ and nitrogen oxides (NO_x).

As a result of EPA's determination that CAIR was "better-than-BART," a number of states in which CAIR applies, including Ohio, relied on the CAIR cap-and-trade programs as an alternative to BART for EGU emissions of SO₂ and NO_x in designing their regional haze SIPs. These states also relied on CAIR as an element of a long-term strategy (LTS) for achieving reasonable progress goals (RPGs) for their regional haze programs. However, in 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to EPA without vacatur (preserving the environmental benefits provided by CAIR). *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and issued FIPs to implement the rule in CSAPR-subject states.² Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR would have superseded the CAIR program.

² CSAPR requires 28 eastern states to limit their statewide emissions of SO₂ and/or NO_x in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: the 1997 ozone NAAQS, the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2008 8-hour ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO₂, annual NO_x, and/or ozone-season NO_x by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 budgets applying to emissions in 2017 and later years.

Due to the D.C. Circuit's 2008 ruling that CAIR was "fatally flawed," and its resulting status as a temporary measure following that ruling, EPA could not fully approve regional haze SIPs to the extent that they relied on CAIR to satisfy the BART requirement and the requirement for a LTS sufficient to achieve the state-adopted RPGs. On these grounds, EPA finalized a limited disapproval of Ohio's regional haze SIP on June 7, 2012 (77 FR 33642), triggering the requirement for EPA to promulgate a FIP unless Ohio submitted and EPA approved a SIP revision that corrected the deficiency. EPA finalized a limited approval of Ohio's regional haze SIP on July 2, 2012 (77 FR 39177), as meeting the remaining applicable regional haze requirements set forth in the CAA and the RHR.

In the June 7, 2012 limited disapproval action, EPA also amended the RHR to provide that participation by a state's EGUs in a CSAPR trading program for a given pollutant - either a CSAPR Federal trading program implemented through a CSAPR FIP or an integrated CSAPR state trading program implemented through an approved CSAPR SIP revision - qualifies as a BART alternative for those EGUs for that pollutant.³ See 40 CFR 51.308(e)(4). Since EPA promulgated this amendment, numerous states covered by

³ Legal challenges to the CSAPR-Better-than-BART rule from state, industry, and other petitioners are pending. *Utility Air Regulatory Group v. EPA*, No. 12-1342 (D.C. Cir. filed August 6, 2012).

CSAPR, including Ohio, have utilized the provision through either SIPs or FIPs.⁴

Numerous parties filed petitions for review of CSAPR in the D.C. Circuit, and on August 21, 2012, the court issued its ruling, vacating and remanding CSAPR to EPA and ordering continued implementation of CAIR. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit's vacatur of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015).

The remanded budgets include the Phase 2 SO₂ emissions budgets for four states and the Phase 2 ozone-season NO_x budgets for Ohio, and 10 other states. This litigation ultimately

⁴ EPA has promulgated FIPs relying on CSAPR participation for BART purposes for Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, 77 FR at 33654, and Nebraska, 77 FR 40150, 40151 (July 6, 2012), and Texas 82 FR 48324 (October 17, 2017). EPA has approved Minnesota's, Wisconsin's, and Alabama's SIPs relying on CSAPR participation for BART purposes. See 77 FR 34801 (June 12, 2012) for Minnesota, 77 FR 46952 (August 7, 2012) for Wisconsin, and 82 FR 47393 (October 12, 2017) for Alabama.

delayed implementation of CSAPR for three years, from January 1, 2012, when CSAPR's cap-and-trade programs were originally scheduled to replace the CAIR cap-and-trade programs, to January 1, 2015. Thus, the rule's Phase 2 budgets that were originally scheduled to begin on January 1, 2014, began on January 1, 2017.

On September 29, 2017 (82 FR 45481), EPA published a final rule affirming the continued validity of the Agency's 2012 determination that participation in CSAPR meets the RHR's criteria for an alternative to the application of source specific BART. In the rulemaking, EPA explained that the limited changes to the scope of CSAPR coverage did not alter EPA's conclusion that CSAPR remains "better-than-BART;" that is, that participation in CSAPR remains available as an alternative to BART for EGUs covered by the trading program.

Ohio's November 30, 2016 SIP submittal seeks to correct the deficiencies identified in the June 7, 2012 limited disapproval of its regional haze SIP by replacing reliance on CAIR with reliance on CSAPR. Specifically, Ohio requests that EPA approve the State's regional haze SIP revision that replaces reliance on CAIR with CSAPR to satisfy SO₂ and NO_x BART requirements and SO₂ reasonable progress requirements for EGUs formerly subject to

CAIR,⁵ and as part of the LTS for Ohio in the first planning period of the RHR.

B. Infrastructure SIPs

The "infrastructure SIP" 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 requirement for states to make an infrastructure SIP submission is under CAA section 110(a)(1). SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are required to be submitted by states within three years (or less, if the Administrator so prescribes) after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs.

⁵ In its regional haze SIP, Ohio concluded and EPA found acceptable, that no additional controls beyond CAIR are reasonable for SO₂ for affected Ohio EGUs for the first implementation period. See 77 FR 39177 (July 2, 2012).

Section 110(a) (2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a) (2) (D) has two components: 110(a) (2) (D) (i) and 110(a) (2) (D) (ii). Section 110(a) (2) (D) (i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a) (2) (D) (i) (I), prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a) (2) (D) (i) (II), prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4).

Prong 4 Requirements

Section 110(a)(2)(D)(i)(II) requires a state's implementation plan to contain provisions prohibiting sources in that state from emitting pollutants in amounts that interfere with any other state's efforts to protect visibility under part C of the CAA (which includes sections 169A and 169B). The 2013 Guidance⁶ states that these prong 4 requirements can be satisfied by approved SIP provisions that EPA has found to adequately address any contribution of that state's sources that impact the visibility program requirements in other states. The 2013 Guidance also states that EPA interprets this prong to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.

The 2013 Guidance lays out how a state's infrastructure SIP may satisfy prong 4. One way is via confirmation that the state has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. The regulations at 40 CFR 51.308 and 51.309 specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully

⁶ "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013

approved regional haze SIP will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility.

Alternatively, in the absence of a fully approved regional haze SIP, a state may meet the requirements of prong 4 through a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Such an infrastructure SIP submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions conform with any mutually agreed upon regional haze RPGs for mandatory Class I areas in other states.

Through this action, EPA is proposing to approve the prong 4 portion of Ohio's infrastructure SIP submissions for the 2012 PM_{2.5}, 2010 NO₂, and 2010 SO₂ standards, and to convert EPA's disapproval of the prong 4 portion of Ohio's infrastructure SIP submission for the 2008 ozone NAAQS to an approval, as discussed in section IV of this action. All other applicable infrastructure SIP requirements for these SIP submissions have been or will be addressed in separate rulemakings. A brief background regarding the NAAQS relevant to this proposal is provided below.

1. 2012 and 2006 PM_{2.5} NAAQS

On December 14, 2012, EPA revised the annual primary PM_{2.5} NAAQS to 12 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). See 78 FR 3086 (January 15, 2013). States were required to submit infrastructure SIP submissions for the 2012 PM_{2.5} NAAQS to EPA no later than December 14, 2015. Ohio submitted an infrastructure SIP submission for the 2012 PM_{2.5} NAAQS on December 4, 2015. This proposed action only addresses the prong 4 element of that submission. The other portions of Ohio's December 4, 2015 PM_{2.5} infrastructure submission have been previously addressed (81 FR 64072, September 19, 2016) or will be addressed in a separate action.

On December 18, 2006, EPA revised the 24-hour average primary and secondary PM_{2.5} NAAQS to $35\mu\text{g}/\text{m}^3$. See 71 FR 61144 (October 17, 2006). States were required to submit infrastructure SIP submissions for the 2006 PM_{2.5} NAAQS to EPA no later than September 21, 2009. Ohio submitted an infrastructure SIP submission for the 2006 PM_{2.5} NAAQS on September 4, 2009, supplemented on June 3, 2011, and July 5, 2011. This proposed action only addresses the prong 4 element of that submission. The other portions of Ohio's September 4, 2009 PM_{2.5} infrastructure submission have been previously addressed (76 FR 48208, August 8, 2011, 77 FR 65478, October 29, 2012, and 79 FR 18999, April 7, 2014).

2. 2010 SO₂ NAAQS

On June 2, 2010, EPA revised the primary SO₂ NAAQS to an hourly standard of 75 parts per billion (ppb) based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. See 75 FR 35520 (June 22, 2010). States were required to submit infrastructure SIP submissions for the 2010 SO₂ NAAQS to EPA no later than June 2, 2013. Ohio submitted an infrastructure SIP submission for the 2010 1-hour SO₂ NAAQS on June 7, 2013. This proposed action only addresses the prong 4 element of that submission. The other portions of Ohio's June 7, 2013 SO₂ infrastructure submission have been addressed in a previous EPA action (80 FR 48733, August 14, 2015).

3. 2010 NO₂ NAAQS

On January 22, 2010, EPA promulgated a new 1-hour primary NAAQS for NO₂ at a level of 100 ppb, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. See 75 FR 6474 (February 9, 2010). States were required to submit infrastructure SIP submissions for the 2010 NO₂ NAAQS to EPA no later than January 22, 2013. Ohio submitted infrastructure SIP submissions for the 2010 NO₂ NAAQS on February 8, 2013, and February 25, 2013. This proposed action only addresses the prong 4 element of those submissions. The other portions of Ohio's February 8, 2013, and February 25,

2013 NO₂ infrastructure submissions have been addressed in a previous EPA action (79 FR 60075, October 6, 2014).

4. 2008 Ozone NAAQS

On March 12, 2008, EPA revised the ozone NAAQS to 0.075 parts per million. See 73 FR 16436 (March 27, 2008). States were required to submit infrastructure SIP submissions for the 2008 ozone NAAQS to EPA no later than March 12, 2011. Ohio submitted an infrastructure SIP for the 2008 ozone NAAQS on December 27, 2012. On August 12, 2016, EPA disapproved the prong 4 element of Ohio's 2008 ozone infrastructure submission. See 81 FR 53309. This proposed action addresses that disapproval and proposes to convert it to a full approval for prong 4. The other portions of Ohio's December 27, 2012 ozone infrastructure SIP submission have been addressed in a previous EPA action (79 FR 62019, October 16, 2014).

II. What Is EPA's Analysis of How Ohio Addressed Regional Haze and Prong 4?

Ohio submitted infrastructure SIPs for the following NAAQS: 2012 annual PM_{2.5} (December 4, 2015); 2010 NO₂ (February 8 and 25, 2013); 2010 SO₂ (June 7, 2013); and 2008 ozone (December 27, 2012) which relied on the State having a fully approved regional haze SIP to satisfy its prong 4 requirements. However, EPA had not previously fully approved Ohio's regional haze SIP. The Agency issued a limited disapproval of the State's original

regional haze plan on June 7, 2012, due to its reliance on CAIR, which also triggered the requirement for EPA to promulgate a FIP in Ohio utilizing CSAPR. To correct the deficiencies in its regional haze SIP and obtain approval of the aforementioned infrastructure SIPs that rely on the regional haze SIP, the State submitted a SIP revision on November 30, 2016, to replace reliance on CAIR with reliance on CSAPR.

As noted above, EPA determined that CSAPR remains "better than BART," given the changes to CSAPR's scope in response to the D.C. Circuit's remand. Because the Agency has finalized the "CSAPR remains better-than-BART" rulemaking EPA is proposing to approve the regional haze portion of the State's November 30, 2016 SIP revision and convert EPA's previous action on Ohio's regional haze SIP from a limited approval/limited disapproval to a full approval. Specifically, EPA's finds that this portion of Ohio's November 30, 2016 SIP revision satisfies the SO₂ and NO_x BART requirements and SO₂ reasonable progress requirements for EGUs formerly subject to CAIR. Because a state may satisfy prong 4 requirements through a fully approved regional haze SIP, EPA is also proposing to approve the prong 4 portion of Ohio's 2012 and 2006 PM_{2.5} submissions; 2010 NO₂ submissions; 2010 SO₂ submission; and to convert EPA's disapproval of the prong 4 portions of Ohio's 2008 ozone infrastructure submission to an approval.

III. Proposed Action

EPA is proposing to take the following actions: 1) approve the portion of Ohio's November 30, 2016 SIP submittal seeking to change from reliance on CAIR to reliance on CSAPR for certain regional haze requirements; 2) convert EPA's limited approval/limited disapproval of Ohio's March 11, 2011 regional haze SIP to a full approval; 3) withdraw the FIP provisions that address the limited disapproval; 4) approve the visibility prong of Ohio's infrastructure SIP submittals for the 2012 and 2006 PM_{2.5}, 2010 NO₂, and 2010 SO₂ NAAQS; and 5) convert EPA's disapproval of the visibility portion of Ohio's infrastructure SIP submittal for the 2008 ozone NAAQS to an approval.

All other applicable infrastructure requirements for the infrastructure SIP submissions have been or will be addressed in separate rulemakings.

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 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Particulate matter, Reporting and
recordkeeping requirements, Sulfur oxides, Volatile organic
compounds.

Dated: December 8, 2017.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

[FR Doc. 2017-27431 Filed: 12/20/2017 8:45 am; Publication Date: 12/21/2017]