



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2017-0441; FRL-9983-07-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Infrastructure Requirements for the 2012 Fine Particulate Matter National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submission from Maryland addressing the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 annual fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS or standard). 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. EPA is approving Maryland's submittal addressing the infrastructure requirements for the 2012 PM<sub>2.5</sub> NAAQS in accordance with the requirements of section 110 of the CAA.

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

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0441. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., 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 through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Sara Calcinore, (215) 814 2043, or by e-mail at [calcinore.sara@epa.gov](mailto:calcinore.sara@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Particle pollution, also referred to as particulate matter (PM), is a complex mixture of small particles and liquid droplets suspended in the air, which causes adverse health effects and is the leading cause of visibility impairment in the United States. Particles with a diameter equal to or less than 2.5 microns, referred to as fine particulate matter or PM<sub>2.5</sub>, are either emitted directly into the atmosphere or are formed from the chemical reactions of precursor gases, such as sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), certain volatile organic compounds (VOCs), and ammonia, in the atmosphere. SO<sub>2</sub> and NO<sub>x</sub> are the primary precursors for the formation of PM<sub>2.5</sub> and are emitted primarily from point sources as well as nonpoint, onroad, and nonroad sources.

On July 18, 1997, EPA promulgated a new 24-hour and a new annual NAAQS for PM<sub>2.5</sub> (62 FR 38652). On October 17, 2006, EPA revised the NAAQS for PM<sub>2.5</sub>, tightening the 24-hour PM<sub>2.5</sub> standard from 65 micrograms per cubic meter (µg/m<sup>3</sup>) to 35 µg/m<sup>3</sup>, and retaining the annual PM<sub>2.5</sub> NAAQS at 15 µg/m<sup>3</sup> (71 FR 61144). Subsequently, on December 14, 2012, EPA revised the level of the health based (primary) annual PM<sub>2.5</sub> NAAQS to 12 µg/m<sup>3</sup>. *See* 78 FR 3086

(January 15, 2013).<sup>1</sup>

Pursuant to section 110(a)(1), states must submit “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),” a plan that provides for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions and the requirements 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 commonly refers to such state plans as “infrastructure SIPs.”

## **II. Summary of SIP Revision and EPA Analysis**

On August 18, 2016, the State of Maryland, through the Maryland Department of the Environment (MDE), formally submitted a SIP revision (SIP #16-12) in order to satisfy the requirements of section 110(a) of the CAA for the 2012 PM<sub>2.5</sub> NAAQS. The SIP submittal addressed the following infrastructure elements for the 2012 PM<sub>2.5</sub> NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Maryland’s infrastructure SIP submittal did not address the following two elements of CAA section 110(a)(2): the portion of section 110(a)(2)(C) pertaining to permit programs, known as nonattainment new source review (NNSR), under part D of the CAA, and section 110(a)(2)(I), referred to as “element (I),” pertaining to the nonattainment requirements of part D, title I of the CAA. According to the EPA guidance issued on September 13, 2013 (2013 Infrastructure

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<sup>1</sup> In EPA’s 2012 PM<sub>2.5</sub> NAAQS revision, EPA left unchanged the existing welfare (secondary) standards for PM<sub>2.5</sub> to address particulate matter (PM) related effects such as visibility impairment, ecological effects, damage to materials, and climate impacts. This includes a secondary annual standard of 15 µg/m<sup>3</sup> and a 24-hour standard of 35 µg/m<sup>3</sup>.

Guidance),<sup>2</sup> the NNSR permitting program requirement of section 110(a)(2)(C) is to be addressed in a different SIP, and therefore does not need to be addressed in this SIP revision. Section 110(a)(2)(I) is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1) and will be addressed in a separate process if necessary.

On July 5, 2018 (83 FR 31352), EPA published a notice of proposed rulemaking (NPR) for Maryland. In the NPR, EPA proposed approval of Maryland's August 18, 2016 infrastructure SIP submittal for the 2012 PM<sub>2.5</sub> NAAQS. A detailed summary of EPA's review and rationale for approving Maryland's submittal may be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2017-0441.

### **III. Public Comments and EPA Response**

EPA received a total of three comments on the July 5, 2018 NPR. Two of the comments did not concern any of the specific issues raised in the NPR, nor did they address EPA's rationale for the proposed approval of MDE's submittal. Therefore, EPA is not responding to those comments. EPA also received a comment that was supportive of EPA's proposed approval of Maryland's August 18, 2016 infrastructure SIP submittal for the 2012 PM<sub>2.5</sub> NAAQS. All of the comments received are included in the docket for this action, available online at [www.regulations.gov](http://www.regulations.gov), Docket ID: EPA-R03-OAR-2017-0441.

### **IV. Final Action**

EPA's review of Maryland's August 18, 2016 infrastructure SIP submittal for the 2012 PM<sub>2.5</sub> NAAQS indicates that MDE's August 18, 2016 submittal satisfies the infrastructure

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<sup>2</sup> "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.

requirements of CAA section 110(a) for the 2012 PM<sub>2.5</sub> NAAQS.<sup>3</sup> EPA is approving Maryland's August 18, 2016 infrastructure SIP submittal for the 2012 PM<sub>2.5</sub> NAAQS as a revision to the Maryland SIP.

## **V. Statutory and Executive Order Reviews**

### **A. General Requirements**

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.);

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<sup>3</sup> As stated above, Maryland's infrastructure SIP submittal did not address the portion of CAA section 110(a)(2)(C) pertaining to the NNSR permitting program nor CAA section 110(a)(2)(I) pertaining to the nonattainment requirements of part D, title I of the CAA. According to the 2013 Infrastructure Guidance, the NNSR permitting program requirement of section 110(a)(2)(C) is to be addressed in a different SIP and therefore does not need to be addressed in this SIP revision. Section 110(a)(2)(I) is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1) and will be addressed in a separate process if necessary.

- 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.

## **B. Submission to Congress and the Comptroller General**

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).

### **C. Petitions for Judicial Review**

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 approving Maryland's August 18, 2016 infrastructure SIP submittal for the 2012 PM<sub>2.5</sub> NAAQS 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 21, 2018.

Cecil Rodrigues,  
Acting Regional Administrator,  
Region III.

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.

**Subpart V--Maryland**

2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for “Section 110(a)(2) Infrastructure Requirements for the 2012 PM<sub>2.5</sub> NAAQS” at the end of the table to read as follows:

**§ 52.1070 Identification of plan.**

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(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* *	* *	* *	
Section 110(a)(2) Infrastructure Requirements for the 2012 PM <sub>2.5</sub> NAAQS	Statewide	8/18/2018	<b><u>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</u></b>	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action does not address the portion of CAA section 110(a)(2)(C) related to NNSR nor CAA section 110(a)(2)(I).

[FR Doc. 2018-18854 Filed: 8/30/2018 8:45 am; Publication Date: 8/31/2018]