



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2018-0054; FRL-9984-99-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Interstate Transport Requirements for the 2012 Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the infrastructure requirement for interstate transport of pollution with respect to the 2012 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). EPA is approving this revision in accordance with the requirements of the Clean Air Act (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-2018-0054. 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: Joseph Schulingkamp, (215) 814-2021, or by e-mail at schulingkamp.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 14, 2018 (83 FR 27732), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. In the NPR, EPA proposed approval of the Pennsylvania SIP revision addressing the interstate transport requirements for the 2012 PM_{2.5} NAAQS in CAA section 110(a)(2)(D)(i)(I) submitted on October 11, 2017. For more information on particulate pollution, EPA’s infrastructure requirements, and interstate transport requirements, see Section I of the NPR.

II. Summary of SIP Revision and EPA Analysis

Pennsylvania’s October 11, 2017 SIP submittal includes a summary of statewide annual emissions of PM_{2.5}, coarse particulate matter (PM₁₀), and precursors of PM_{2.5} including oxides of nitrogen (NO_x), sulfur dioxide (SO₂), ammonia, and volatile organic compounds (VOCs). Pennsylvania also included statewide SO₂ and NO_x emissions specifically from the electric generating units (EGU) sector as EGUs are the largest contributor to the point source emissions. The emissions summary shows that, for the years 2011 through 2015, emissions of all pollutants presented have been steadily decreasing or remained nearly steady for sources that potentially contribute to nonattainment in, or interfere with maintenance of the 2012 PM_{2.5} NAAQS in any other state. The submittal also included currently available air quality monitoring data for PM_{2.5}.

Pennsylvania also discussed EPA's March 17, 2016 memorandum (2016 PM_{2.5} Memorandum) and the fact that EPA's analysis showed that only one monitor in the eastern United States had projected PM_{2.5} data above the 12.0 micrograms per cubic meter (µg/m³) NAAQS value (Allegheny County, PA).¹ Pennsylvania also generally discussed prevailing wind directions and several existing SIP-approved measures and other federally enforceable source-specific measures, pursuant to permitting requirements under the CAA, that apply to sources of PM_{2.5} and its precursors within the Commonwealth. Pennsylvania alleges that with these measures, emissions reductions, ambient monitored PM_{2.5} data, and meteorological data, the Commonwealth does not significantly contribute to, or interfere with the maintenance of, another state for the 2012 PM_{2.5} NAAQS.

EPA used the information in the 2016 PM_{2.5} Memorandum and additional information for the evaluation and came to the same conclusion as Pennsylvania. EPA identified the potential downwind nonattainment and maintenance receptors identified in the 2016 PM_{2.5} Memorandum, and then determined that Pennsylvania's emissions will not contribute to these receptors, and thus will not contribute to nonattainment and maintenance problems, in 2021 – the attainment year for moderate PM_{2.5} nonattainment areas for the 2012 PM_{2.5} NAAQS.

A detailed summary of Pennsylvania's submittal and the rationale for EPA's proposed action are explained in the NPR and accompanying technical support document (TSD) and will not be restated here.

III. Response to Comments

¹ "Information on the Interstate Transport "Good Neighbor" Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act section 110(a)(2)(D)(i)(I)," memorandum from Stephan D. Page, Director, EPA Office of Air Quality Planning and Standards.

EPA received a total of four sets of comments on the June 14, 2018 NPR. Three of those did not concern any of the specific issues raised in the NPR, nor did they address EPA's rationale for the proposed approval of Pennsylvania's submittal. Therefore, EPA is not responding to those comments. EPA did receive one relevant set of comments; those comments, and EPA's response is discussed below. All of the comments received are included in the docket for this action.

Comment: The commenter first identifies that Pennsylvania submitted a SIP revision on July 15, 2014 and that all elements were approved except those under CAA sections 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). The commenter notes that EPA is required to act on a SIP revision within 12 months of finding the submittal complete and asks why EPA has not performed its statutory duty of acting on CAA section 110(a)(2)(D)(i)(II) within the prescribed time frame. The commenter continues, asking what was done between 2014 and the present to ensure that visibility protection was federally enforceable as required "by this prong 4" in terms of protecting human health and the environment.

Response: As stated in the NPR, Pennsylvania's July 15, 2014 SIP submittal did not include provisions addressing CAA section 110(a)(2)(D)(i)(I), and therefore that particular element of CAA section 110(a)(2)(D) (prohibiting emissions that contribute significantly to nonattainment, or interfere with maintenance of the NAAQS in any other state) was not before EPA for approval. See 83 FR 27733 (June 14, 2018). EPA's prior action on the July 15, 2014 SIP submittal approved the portion of the submittal which addressed the CAA section 110(a)(2)(D)(i)(II) element related to prevention of significant deterioration as it was addressed in the July 15, 2014 SIP submission, except EPA did not approve the portion of the July 15, 2014 submittal addressing CAA section 110(a)(2)(D)(i)(II) related to the visibility prong, that is,

“prong 4.” See 80 FR 26461 (May 8, 2015). EPA did not take action on prong 4 because the U.S. Court of Appeals for the Third Circuit had vacated and remanded EPA’s limited approval of Pennsylvania’s regional haze SIP (as it related to certain best available retrofit technology (BART) requirements). See *Nat’l Parks Conservation Ass’n v. United States EPA*, 803 F.3d 151 (3rd Cir. 2015). EPA had also previously done a limited disapproval of the Pennsylvania regional haze SIP for relying on the Clean Air Interstate Rule (CAIR)² to satisfy the BART requirement for emissions of SO₂ and NO_x from Pennsylvania’s BART-eligible electric generating units (EGUs). See 77 FR 33642 (June 7, 2012). In that same action, EPA imposed a federal implementation plan (FIP) that replaced Pennsylvania’s reliance on CAIR with reliance on the Cross-State Air Pollution Rule (CSAPR)³ for certain BART requirements for EGUs. Thus, due to the Third Circuit’s remand of the limited approval on the Pennsylvania regional haze SIP for certain BARTs and due to the partial regional haze FIP applicable to certain EGU BARTs, EPA was not able to approve at that time that portion of Pennsylvania’s July 15, 2014 SIP submittal addressing whether the Pennsylvania SIP had adequate provisions to prevent interference with other states’ efforts to protect visibility (prong 4, CAA section 110(a)(2)(D)(i)(I)). As indicated in EPA’s final action on the July 15, 2014 SIP submittal, EPA stated the Agency would take later separate action on the portion of the July 15, 2014 submittal addressing prong 4. See 80 FR 26461.

Regarding commenter’s concern about what was done between July 2014 and the present to ensure that visibility was protected, EPA notes that the partial regional haze FIP has been in

² CAIR required certain states, including Pennsylvania, to reduce emissions of SO₂ and NO_x that significantly contribute to downwind nonattainment of the 1997 NAAQS for ozone and fine particulate matter (PM_{2.5}). 70 FR 25162 (May 12, 2005).

³ EPA promulgated CSAPR (76 FR 48208, August 8, 2011) as a replacement to CAIR in response to the United States Court of Appeals for the District of Columbia Circuit’s decision in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008).

place since July 2012 providing visibility protection as the partial FIP addresses NO_x and SO₂ BART from EGUs in Pennsylvania which are some of the largest emitters of visibility impairing pollutants in the Commonwealth. Pennsylvania is currently preparing a revised regional haze SIP submission to respond to the September 2015 decision from the Third Circuit.

Furthermore, as EPA stated in the NPR, “EPA’s previous approval on that July 15, 2014 submittal is not at issue in this proposed rulemaking action and is mentioned herein for background; EPA is not at this time taking action on the remaining section of PADEP’s July 15, 2014 submittal relating to visibility protection for the 2012 PM_{2.5} NAAQS.” The NPR noted that EPA will take later, separate action on the July 15, 2014 submittal as it relates to visibility protection under CAA section 110(a)(2)(D)(i)(II). This rulemaking action relates only to CAA section 110(a)(2)(D)(i)(I), which Pennsylvania addressed in its October 11, 2017 SIP submission. The October 11, 2017 submittal was determined complete on October 26, 2017, therefore the statutory deadline for EPA’s final action is October 26, 2018. EPA’s final rulemaking herein meets that statutory deadline.

Comment: The commenter asks why, if Pennsylvania had not submitted a SIP revision addressing CAA section 110(a)(2)(D)(i)(I) for the 2012 PM_{2.5} NAAQS, EPA did not issue a finding of failure to submit as required by statute and then remedy the deficiency with a FIP.

Response: CAA section 110(a)(1) requires that states adopt and submit to EPA “within 3 years (or such shorter period as the Administrator may provide) after the promulgation of” a new or revised NAAQS a plan providing for the implementation, maintenance, and enforcement of the NAAQS. The revised 2012 PM_{2.5} NAAQS was published on January 15, 2013 and became final on March 18, 2013. *See* 78 FR 3086. Thus, Pennsylvania was not required to submit a SIP to

EPA until March 18, 2016. Therefore, a finding of failure to submit for CAA section 110(a)(2)(D)(i)(I) or any FIP would have been premature when EPA acted on the July 15, 2014 SIP submittal addressing section 110(a)(2) requirements for the 2012 PM_{2.5} NAAQS on May 8, 2015. In the May 8, 2015 rulemaking, EPA stated it would take action on the remaining elements of CAA section 110(a)(2)(D)(i)(II) for visibility protection at a later date. Our final action herein addresses the CAA section 110(a)(2)(D)(i)(I) requirements for Pennsylvania with our approval of Pennsylvania's October 11, 2017 submittal.

Comment: The commenter requests that EPA explain and quantify how delayed action on PADEP's SIP revisions with regard to CAA sections 110(a)(2)(D)(i)(I) and (II) for PM_{2.5} affected any changes in respiratory ailments in Pennsylvania residents.

Response: First, EPA reiterates that the visibility protections under CAA section 110(a)(2)(D)(i)(II) are not at issue in this rulemaking as EPA has stated in the NPR and in our prior action on the July 15, 2014 SIP submittal that we will take later rulemaking action on Pennsylvania's obligations relating to visibility protection in CAA section 110(a)(2)(D)(i)(II). Second, EPA has not delayed action on PADEP's SIP revision addressing CAA section 110(a)(2)(D)(i)(I). Pennsylvania submitted the SIP revision on October 11, 2017 and EPA determined it complete on October 26, 2017; therefore, EPA's statutory deadline is October 26, 2018. Because EPA has not delayed action, the commenter's supposition that EPA's delay affected respiratory ailments in Pennsylvania residents is based on a faulty premise and thus is incorrect. In any event, consideration of respiratory ailments is not required by the statutory language in CAA section 110(a)(2)(D)(i)(I).

Comment: The commenter asks why the regulatory community is devoting so much time

devising analyses and justification for “elements that have no meaning in actual emission reductions or improvement in air quality.” The commenter continues by asking EPA to explain what has been accomplished in terms of ensuring the well-being of human health and the environment through this requirement.

Response: CAA section 110(a)(1) requires all states to submit a SIP addressing the elements of CAA section 110(a)(2), including section 110(a)(2)(D)(i)(I), within three years of EPA promulgating a new or revised NAAQS. Therefore, the submission of a SIP addressing CAA section 110(a)(2)(D) is required by law and must be addressed by the states. In addition, the requirement for a new infrastructure SIP submission provides an opportunity for the air agency, the public, and EPA to review the basics of the air quality management program in light of each new or revised NAAQS. In the case of CAA section 110(a)(2)(D)(i)(I), this review is focused on whether a state’s SIP prevents interference with attainment or maintenance of the NAAQS in a nearby state. For CAA section 110(a)(2)(D)(i)(II), this review focuses on whether the state’s SIP addresses requirements for prevention of significant deterioration and visibility protection. Thus, SIP measures addressing CAA section 110(a)(2) are evaluated for a new or revised NAAQS and therefore do protect human health or the environment.

IV. Final Action

EPA is approving the October 11, 2017 SIP revision addressing the interstate transport requirements for the 2012 PM_{2.5} NAAQS to the Pennsylvania SIP because the submittal adequately addresses CAA section 110(a)(2)(D)(i)(I).

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.);
- 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 addressing Pennsylvania's interstate transport requirements for the 2012 PM_{2.5} 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, Particulate matter.

Dated: September 24, 2018.

Cosmo Servidio,
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 NN--Pennsylvania

2. In §52.2020, the table in paragraph (e)(1) is amended by adding a second entry for “Section 110(a)(2) Infrastructure Requirements for the 2012 PM_{2.5} NAAQS” after the first entry entitled the same to read as follows:

§52.2020 Identification of plan.

* * * * *

(e) ***

(1) ***

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 _{2.5} NAAQS	Statewide	10/11/17	[insert date of publication in the Federal Register], [insert Federal Register citation]	Docket #2018-0054. This action addresses the infrastructure element of CAA section 110(a)(2)(D)(i)(I).
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[FR Doc. 2018-21665 Filed: 10/9/2018 8:45 am; Publication Date: 10/10/2018]