6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2019-0216; FRL–9996-09-Region 5]

Air Plan Approval; Ohio; Second Maintenance Plan for 1997 Ozone NAAQS; Dayton-Springfield

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve under the Clean Air Act (CAA), as a revision to the Ohio State Implementation Plan (SIP), the State's plan for maintaining the 1997 ozone National Ambient Air Quality Standard (NAAQS or standard) through 2028 in the Dayton-Springfield area. The Dayton-Springfield area consists of Clark, Greene, Miami and Montgomery Counties. The Ohio Environmental Protection Agency (Ohio EPA) submitted this SIP revision to EPA on April 12, 2019.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-EPA-R05-OAR-2019-0216 at https://www.regulations.gov or via email to aburano.douglas@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from 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, the terms "we", "us", and "our" refer to the EPA.

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I. Summary of EPA's Proposed Action

EPA is proposing to approve, as a revision to the Ohio SIP, an updated 1997 ozone NAAQS maintenance plan for the Dayton-Springfield area. The maintenance plan is designed to keep the Dayton-Springfield area in attainment of the 1997 ozone NAAQS through 2028.

II. Background

Ground-level ozone is formed when oxides of nitrogen (NOx) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants are referred to as ozone precursors. Scientific evidence indicates that adverse public health effects occur following exposure to ozone.

In 1979, under section 109 of the Clean Air Act (CAA), EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour

period. 62 FR 38856 (July 18, 1997).[1] EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004 (69 FR 23857), EPA designated the Dayton-Springfield as nonattainment for the 1997 ozone NAAQS, and the designations became effective on June 15, 2004. Under the CAA, states are also required to adopt and submit SIPs to implement, maintain, and enforce the NAAQS in designated nonattainment areas and throughout the state.

When a nonattainment area has three years of complete, certified air quality data that has been determined to attain the 1997 ozone NAAQS, and the area has met other required criteria described in section 107(d)(3)(E) of the CAA, the state

[1] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.70 ppm. 80 FR 65292 (October 26, 2015)

can submit to EPA a request to be redesignated to attainment, referred to as a "maintenance area".[2]

One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the standard will be promptly corrected. At the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years. CAA section 175A.

EPA has published long-standing guidance for states on developing maintenance plans.[3] The Calcagni Memorandum provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of

[2] Section 107(d)(3)(E) of the CAA sets out the requirements for redesignation. They include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[3] "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the "Calcagni Memorandum").

sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (i.e., attainment year inventory). *See* Calcagni Memorandum at 9.

On November 6, 2006, Ohio EPA submitted to EPA a request to redesignate the Dayton-Springfield area to attainment for the 1997 ozone NAAQS.[4] This submittal included, as a revision to the Ohio SIP, a plan to provide for maintenance of the 1997 ozone NAAQS in the Dayton-Springfield area through 2018. EPA approved the Dayton-Springfield area maintenance plan and redesignated the area to attainment for the 1997 ozone NAAQS on August 13, 2007 (72 FR 45169).[5]

Under CAA section 175A(b), states must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. EPA's final implementation rule for the 2008 ozone NAAQS revoked the 1997

[4] Ohio EPA supplemented this submittal on November 6, 2006, December 4, 2006, December 13, 2006, January 11, 2007, March 9, 2007, March 27, 2007 and May 31, 2007.

[5] On February 11, 2013, Ohio EPA submitted a revision to the original maintenance plan, replacing onroad emissions estimates and MVEBs derived using the MOBILE6.2 model with onroad emissions estimates and MVEBs derived using the MOVES2010a model. EPA approved this revision to Ohio's SIP on October 24, 2013 (78 FR 63388).

ozone NAAQS and provided that one consequence of revocation was that areas that had been redesignated to attainment (i.e., maintenance areas) for the 1997 standard no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[6] However, in *South Coast Air Quality Management District v. EPA*[7] (South Coast II), the D.C. Circuit vacated EPA's interpretation that, because of the revocation of the 1997 ozone standard, second maintenance plans were not required for "orphan maintenance areas," i.e., areas that had been redesignated to attainment for the 1997 NAAQS and were designated attainment for the 2008 ozone NAAQS. Thus, states with these "orphan maintenance areas" under the 1997 ozone NAAQS must submit maintenance plans for the second maintenance period. Accordingly, on April 12, 2019, Ohio submitted a second maintenance plan for the Dayton-Springfield area that shows that the area is expected to remain in attainment of the 1997 ozone NAAQS through 2028, i.e., through the end of the full 20-year maintenance period.

III. EPA's Evaluation of Ohio's SIP Submittal

A. Second Maintenance Plan

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from

[6] *See* 80 FR 12315 (March 6, 2015).
[7] 882 F.3d 1138 (D.C. Cir. 2018)

nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.

On April 12, 2019, Ohio EPA submitted, as a SIP revision, a plan to provide for maintenance of the 1997 ozone standard in the Dayton-Springfield area through 2028, more than 20 years after the effective date of the redesignation to attainment. As discussed below, EPA finds that Ohio's second maintenance plan includes the necessary components and proposes approve the maintenance plan as a revision to the Ohio SIP.

1. Attainment Inventory

The CAA section 175A maintenance plan approved by EPA for the first 10-year period included an attainment inventory for the Dayton-Springfield area that reflects typical summer day VOC and NOx emissions in 2005. This inventory is summarized in Table 1 below.

Table 1. Dayton-Springfield area typical summer day VOC and NO_X emissions for attainment year 2005 in tons per day (tpd)

Source Category	**VOC**	**NO_X**
Nonroad	12.16	84.66
Onroad	55.37	20.24
Point	3.45	36.64
Area	46.23	4.65
Total	115.21	146.19

In addition, because the Dayton-Springfield area continued to monitor attainment of the 1997 ozone NAAQS in 2014, this is also an appropriate year to use for an attainment year inventory. Ohio EPA is using 2014 summer day emissions from EPA 2014 version 7.0 modeling platform as the basis for the attainment inventory presented in Table 2 below.[8] These data are based on the most recently available National Emissions Inventory (2014 NEI version 2).

Table 2. Dayton-Springfield area typical summer day VOC and NO_X emissions for attainment year 2014 (tpd)

Source Category	**VOC**	**NO_X**
Nonroad	8.99	10.18

[8]The inventory documentation for this platform can be found here: https://www.epa.gov/air-emissions-modeling/2014-version-70-platform.

Onroad	19.64	37.51
Point	2.24	4.25
Area	34.14	7.18
Total	65.01	59.12

2. Maintenance Demonstration

Ohio EPA is demonstrating maintenance through 2028 by showing that future emissions of VOC and NO_X for the Dayton-Springfield area remain at or below attainment year emission levels. 2028 is an appropriate maintenance year because it is more than 10 years beyond the first 10-year maintenance period. The 2028 emissions inventory is projected from the EPA 2011 version 6.3 modeling platform.[9] The relevant inventory scenario names are "2014fd" and "2028el." The 2028 scenario was used to support past air quality modeling to support the regional haze program. The 2028 summer day emissions inventory for the Dayton-Springfield, OH area is summarized in Table 3 below. Table 4 documents changes in NO_X and VOC emissions in the Dayton-Springfield area between 2005, 2014 and 2028.

[9]The inventory documentation for this platform can be found here: https://www.epa.gov/air-emissions-modeling/2011-version-63-platform.

Table 3. Dayton-Springfield area typical summer day VOC and NO_X emissions for maintenance year 2028 (tpd)

Source Category	VOC	NO_X
Nonroad	7.64	4.57
Onroad	6.09	11.36
Point	2.65	6.39
Area	24.73	10.39
Total	41.11	32.71

Table 4. Change in typical summer day VOC and NO_X emissions in the Dayton-Springfield area between 2005, 2014, and 2028 (tpd)

Source Category	VOC					NO_X				
	2005	2014	2028	Net Change (2005-2028)	Net Change (2014-2028)	2005	2014	2028	Net Change (2005-2028)	Net Change (2014-2028)
Nonroad	12.16	8.99	7.64	-4.52	-1.35	84.66	10.18	4.57	-80.09	-5.61
Onroad	55.37	19.64	6.09	-49.28	-13.55	20.24	37.51	11.36	-8.88	-26.15
Point	3.45	2.24	2.65	-0.80	0.41	36.64	4.25	6.39	-30.25	2.14
Area	46.23	34.14	24.73	-21.50	-9.41	4.65	7.18	10.39	5.74	3.21
Total	115.21	65.01	41.11	-74.10	-23.90	146.19	59.12	32.71	-113.48	-26.41

In summary, the maintenance demonstration for the Dayton-Springfield area shows maintenance of the 1997 ozone standard by providing emissions information to support the demonstration that future emissions of NO_X and VOC will remain at or below 2014 emission levels when taking into account both future source growth and implementation of future controls. Table 4 shows VOC and NO_X emissions in the Dayton-Springfield area are projected to decrease by 23.90 tpd and 26.41 tpd, respectively, between 2014 and 2028.

3. Continued Air Quality Monitoring

Ohio EPA has committed to continue to operate an approved ozone monitoring network in the Dayton-Springfield, OH area.

Ohio EPA has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. Ohio EPA remains obligated to meet monitoring requirements and continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the Air Quality System (AQS) in accordance with Federal guidelines.

4. Verification of Continued Attainment

The State of Ohio has confirmed that it has the legal authority to enforce and implement the requirements of the maintenance plan for the Dayton-Springfield area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. Ohio EPA has committed to continue to operate an approved ozone monitoring network in the Dayton-Springfield, OH area. Ohio will not discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by EPA.

In addition, to track future levels of emissions, Ohio EPA has committed to continue to develop and submit to EPA updated

emission inventories for all source categories at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539).

5. Contingency Plan

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: the contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and, a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted a contingency plan for the Dayton-Springfield area to address possible future ozone air quality problems. The contingency plan adopted by Ohio has two levels of response, a warning level response and an action level response.

In Ohio's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.088 ppm or higher is monitored within the maintenance area. A warning level response will consist of Ohio EPA conducting a study to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

In Ohio's plan, an action level response is triggered when a two-year average fourth high value of 0.084 ppm or greater is monitored within the maintenance area. A violation of the 1997 ozone standard within the maintenance area also triggers an action level response. In the event that the action level is triggered and is not found to be due to an exceptional event,

malfunction, or noncompliance with a permit condition or rule requirement, Ohio EPA, in conjunction with the metropolitan planning organization or regional council of governments, will determine what additional control measures are needed to assure future attainment of the ozone standard. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. Ohio EPA may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

Ohio EPA included the following list of potential contingency measures in its maintenance plan:

1. Adopt VOC reasonably available control technology (RACT) on existing sources covered by EPA Control Technique Guidelines issued after the 1990 CAA.
2. Apply VOC RACT to smaller existing sources.
3. One or more transportation control measures sufficient to achieve at least half a percent reduction in actual area wide VOC emissions. Transportation measures will be selected from the following, based upon the factors listed above after consultation with affected local governments:

a. trip reduction programs, including, but not limited to, employer-based transportation management plans, area wide rideshare programs, work schedule changes, and telecommuting;

b. traffic flow and transit improvements; and

c. other new or innovative transportation measures not yet in widespread use that affected local governments deem appropriate.

4. Alternative fuel and diesel retrofit programs for fleet vehicle operations.

5. Require VOC or NO_X emission offsets for new and modified major sources.

6. Increase the ratio of emission offsets required for new sources.

7. Require VOC or NO_X controls on new minor sources (less than 100 tons).

8. Adopt NO_X RACT for existing combustion sources.

9. High volume, low pressure coating application requirements for autobody facilities.

10. Requirements for cold cleaner degreaser operations (low vapor pressure solvents).

To qualify as a contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan.

EPA has concluded that Ohio's maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus, EPA finds that the maintenance plan SIP revision submitted by Ohio EPA for the Dayton-Springfield area meets the requirements of section 175A of the CAA and proposed to approve it as a revision to the Ohio SIP.

B. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as "that portion of the total allowable emissions defined in the submitted or approved control strategy

implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions" (40 CFR 93.101).

The South Coast II court decision upheld EPA's revocation of the 1997 ozone NAAQS, which was effective on April 6, 2015. EPA's current transportation conformity regulation requires a regional emissions analysis only during the time period beginning one year after a nonattainment designation for a particular NAAQS until the effective date of revocation of that NAAQS (40 CFR 93.109(c)). Therefore, pursuant to the conformity regulation, a regional emissions analysis using MVEBs is not required for conformity determinations for the 1997 ozone NAAQS because that NAAQS has been revoked (80 FR 12264). As no regional emissions analysis is required for the Dayton-Springfield area, transportation conformity for the 1997 ozone NAAQS can be demonstrated by an MPO and DOT for transportation plans and TIPs by showing that the remaining criteria contained in Table 1 in 40 CFR 93.109, and 40 CFR 93.108 have been met.

IV. Proposed Action

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, and based on Ohio's representations and

commitments set forth above, EPA is proposing to approve the Dayton-Springfield area second maintenance plan for the 1997 ozone NAAQS, submitted by Ohio EPA on April 12, 2019, as a revision to the Ohio SIP. The second maintenance plan is designed to keep the Dayton-Springfield area in attainment of the 1997 ozone NAAQS through 2028.

V. 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 proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 it is not a significant regulatory action 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 disproportionate human health or environmental effects

with practical, appropriate, 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, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 20, 2019.

Cheryl L Newton,

Acting Regional Administrator, Region 5.

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