



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2020-0422; FRL-10018-59-Region 7]**

**Air Plan Approval; Kansas; Infrastructure State Implementation Plan Requirements for the 2015 Ozone National Ambient Air Quality Standard**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve certain elements of a State Implementation Plan (SIP) submission from the State of Kansas addressing the applicable requirements of section 110 of the Clean Air Act (CAA) for the 2015 Ozone (O<sub>3</sub>) National Ambient Air Quality Standard (NAAQS). Section 110 requires that each state adopt and submit a SIP revision to support the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the 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 final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2020-0422. All documents in the

docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., 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 <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** William Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7714; email address: [stone.william@epa.gov](mailto:stone.william@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to the EPA. A technical support document (TSD) is included in the rulemaking docket.

## **Table of Contents**

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

### **I. Background**

On September 11, 2020, the EPA proposed to approve Kansas' infrastructure SIP submission for the 2015 O<sub>3</sub> NAAQS in the *Federal Register* (85 FR 56198; September 11, 2020). The EPA

solicited comments on the proposed approval of the infrastructure SIP submission and received three separate comments that are addressed in this document.

## **II. What is Being Addressed in this Document?**

The EPA is approving the infrastructure SIP submission, submitted by the state by letter dated September 27, 2018<sup>1</sup>, and supplemented by letter dated February 6, 2020, in accordance with section 110(a)(1) of the CAA. Specifically, the EPA is approving the following infrastructure elements of section 110(a)(2) of the CAA: (A) through (C), (D)(i)(II)- prevent significant deterioration of air quality (prong 3) and protection of visibility (prong 4), (D)(ii), (E) through (H), and (J) through (M). Elements of section 110(a)(2)(D)(i)(I) - significant contribution to nonattainment (prong 1), and interfering with maintenance of the NAAQS (prong 2), will be addressed in a separate action.

Although section 110(a)(2)(I) was addressed in the submission<sup>2</sup>, the EPA is not taking action on section 110(a)(2)(I)- Nonattainment Area Plan or Plan Revisions under Part D, as it is the EPA's interpretation of the CAA that these elements do not need to be addressed in the context of an infrastructure SIP submission.

A Technical Support Document (TSD) in the docket provides additional details of this action, including an analysis of how

---

<sup>1</sup> The proposed rule mistakenly stated that Kansas' infrastructure SIP submission was received by the EPA on April 11, 2019.

<sup>2</sup> The proposed rule mistakenly stated that Kansas' infrastructure SIP submission did not address section 110(a)(2)(I).

the SIP meets the applicable 110 requirements for infrastructure SIPs. Included in the TSD is the EPA's analysis concerning Kansas' authority to conduct modeling in accordance with the EPA's "Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches To Address Ozone and Fine Particulate Matter" (also referred to as the 2017 Guideline).<sup>3</sup> 82 FR 5182. While Kansas has not yet formally adopted the 2017 Guideline into its regulations, Kansas states that it has the authority to integrate the requirements and recommendations of the 2017 Guideline in its regulatory processes. As detailed in the TSD, the EPA finds that Kansas' September 27, 2018 submission, supplemented by letter dated February 6, 2020, satisfies the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), and modeling requirements related to CAA section 110(a)(2)(K).

### **III. Have the Requirements for Approval of a SIP Revision Been Met?**

The State met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The EPA determined that the submission satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided a public comment period for this SIP revision from August 23, 2018 to September 24, 2018 and received no comments. In addition, as explained in more detail in the TSD which is part of this docket, the

---

<sup>3</sup> EPA's *Guideline on Air Quality Models* is codified at 40 CFR part 51, appendix W and is generically referred to as *Guideline* herein.

infrastructure SIP submission meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

#### **IV. What is the EPA's Response to Comments?**

The public comment period on the EPA's proposed rule opened September 11, 2020, the date of its publication in the *Federal Register* and closed on October 13, 2020. During this period, the EPA received three comments. One comment was not germane to the action and does not require a response from the EPA. Another comment was supportive of the EPA's proposed approval of Kansas' 2015 O<sub>3</sub> Infrastructure SIP. The third comment, which was supportive of the EPA's proposed approval of Kansas' 2015 O<sub>3</sub> Infrastructure SIP but also identified misstatements in the EPA's proposed rule, was submitted by the Kansas Department of Health and the Environment and is summarized below.

*Comment 1:* The EPA incorrectly listed April 11, 2019 as the date of receipt of Kansas' 2015 O<sub>3</sub> Infrastructure SIP submission in the proposed rule.

*Response 1:* The EPA agrees that it made an error in the proposed rule, and notes that Kansas submitted the 2015 O<sub>3</sub> Infrastructure SIP to the EPA by letter dated September 27, 2018. In addition, the TSD and the 40 CFR part 52 table in the proposed rule correctly identified the September 27, 2018 submittal date. As such, this final rule accurately identifies that the EPA is taking final action on the 2015 O<sub>3</sub> Infrastructure SIP submitted to the EPA by Kansas on September 27, 2018.

*Comment 2:* The EPA mistakenly identified that particular elements related to interstate pollution transport, specifically prongs 1 and 2 of section 110(a)(2)(D)(i)(I), were not addressed in the submission; however, Kansas did include section 110(a)(2)(D)(i)(I) requirements in the September 27, 2018 submission.

*Response 2:* The EPA notes that it made an error in the proposed rule by stating that Kansas did not include prongs 1 and 2 of section 110(a)(2)(D)(i)(I) requirements in the September 27, 2018 submission. As noted in the TSD, the EPA plans to address prongs 1 and 2 in a separate rulemaking. The EPA has revised the 40 CFR part 52 table accompanying this action in order to address Kansas' comment.

*Comment 3:* The EPA states that Kansas did not address section 110(a)(2)(I) requirements in the 2015 O<sub>3</sub> Infrastructure SIP submission; however, Kansas did include section 110(a)(2)(I) requirements in the September 27, 2018 submission.

*Response 3:* The EPA notes that it made an error in the proposed rule by stating that Kansas did not address section 110(a)(2)(I) requirements in Kansas' 2015 O<sub>3</sub> Infrastructure SIP submission. However, as discussed in the proposed rule and the TSD, it is the EPA's interpretation of the CAA that section 110(a)(2)(I) does not need to be addressed in the context of an infrastructure SIP submission. Section 110(a)(2)(I) requires states to meet the applicable SIP requirements of part D of the CAA relating to designated nonattainment areas. The specific

part D submissions for designated nonattainment areas are subject to different submission schedules than those for section 110 infrastructure elements. The EPA acts on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D. As such, this final rule does not address the section 110(a)(2)(I) requirements that were included in Kansas' 2015 O<sub>3</sub> Infrastructure SIP submission.

#### **V. What Action is EPA Taking?**

The EPA is approving elements of the September 27, 2018, infrastructure SIP submission from the State of Kansas, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2015 O<sub>3</sub> NAAQS. Specifically, the EPA is approving the following infrastructure elements of section 110(a)(2): (A) through (C), (D)(i)(II) prong 3 and prong 4, (D)(ii), (E) through (H), (J) through (M). The EPA intends to act on the elements of section 110(a)(2)(D)(i)(I)- prong 1 and prong 2, in a subsequent rulemaking. The EPA is not addressing section 110(a)(2)(I)- Nonattainment Area Plan or Plan Revisions under part D, as it is the EPA's interpretation of the CAA that these elements do not need to be addressed in the context of an infrastructure SIP submission.

Based upon review of the State's infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, the EPA finds that Kansas' SIP meets all applicable

required elements of sections 110(a) (1) and (2) (except as otherwise noted) with respect to the 2015 O<sub>3</sub> NAAQS.

## **VI. 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, the 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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 the 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 Fed. Reg. 67249, November 9, 2000).

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).

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,  
Incorporation by reference, Infrastructure, Intergovernmental  
relations, Ozone.

Dated: \_\_\_\_\_  
December 14, 2020. James Gulliford,  
Regional Administrator,  
Region 7.

For the reasons stated in the preamble, the EPA amends the  
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 R--KANSAS**

2. In § 52.870, the table in paragraph (e) is amended by adding

the entry "(45)" in numerical order to read as follows:

§ 52.870 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

**EPA-APPROVED KANSAS NONREGULATORY PROVISIONS**

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
* * * * *				
(45) Section 110(a)(2) Infrastructure Requirements for the 2015 O <sub>3</sub> NAAQS	Statewide	9/27/18	[insert date of publication in the Federal Register], [insert Federal Register citation]	[EPA-R07-OAR-2020-0422; FRL-10013-71-Region 7]. This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) - prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA intends to act on 110(a)(2)(D)(i)(I) - prongs 1 and 2, in a separate action. 110(a)(2)(I) is not applicable.

[FR Doc. 2020-28120 Filed: 1/14/2021 8:45 am; Publication Date: 1/15/2021]