



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2020-0316; FRL-10018-14-Region 3]

Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standards

Second Maintenance Plan for the Scranton-Wilkes-Barre Area

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 Commonwealth's plan, submitted by the Pennsylvania Department of Environmental Protection (PADEP), for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) (referred to as the "1997 ozone NAAQS") in the Scranton-Wilkes-Barre, Pennsylvania area (Scranton-Wilkes-Barre Area). This action is being taken under 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-2020-0316. All documents in the docket are listed on the <https://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 <https://www.regulations.gov>, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2181. Ms. Pino can also be reached via electronic mail at pino.maria@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 3, 2020 (85 FR 54961), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of Pennsylvania's plan for maintaining the 1997 ozone NAAQS in the Scranton-Wilkes-Barre Area through December 19, 2027, in accordance with CAA section 175A. The formal SIP revision was submitted by PADEP on March 10, 2020.

II. Summary of SIP Revision and EPA Analysis

On November 19, 2007 (72 FR 64948, effective December 19, 2007), EPA approved a redesignation request (and maintenance plan) from PADEP for the Scranton-Wilkes-Barre Area. In accordance with section 175A(b), 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, and in *South Coast Air Quality Management District v. EPA*,¹ the D.C. Circuit held that this requirement cannot be waived for areas, like the Scranton-Wilkes-Barre Area, that had been redesignated to attainment for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: 1) an attainment emissions 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.² PADEP's March 10, 2020 submittal fulfills Pennsylvania's obligation to submit a second maintenance plan and addresses each of the five necessary elements.

As discussed in the September 3, 2020 NPRM, EPA allows the submittal of a less rigorous, limited maintenance plan (LMP) to meet the CAA section 175A requirements by demonstrating that the area's design value³ is well below the NAAQS and that the historical stability of the area's air quality

¹ 882 F.3d 1138 (D.C. Cir. 2018).

² "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

³ The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

levels shows that the area is unlikely to violate the NAAQS in the future. EPA evaluated PADEP's March 10, 2020 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the Scranton-Wilkes-Barre Area as a revision to the Pennsylvania SIP. The effect of this action makes certain commitments related to the maintenance of the 1997 ozone NAAQS Federally enforceable as part of the Pennsylvania SIP.

Other specific requirements of PADEP's March 10, 2020 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

III. EPA's Response to Comments Received

EPA received one comment in support of its proposed approval of PADEP's March 10, 2020 submittal. EPA received no adverse comments on the September 3, 2020 NPRM. Therefore, no response to comments is required.

IV. Final Action

EPA is approving PADEP's second maintenance plan for the Scranton-Wilkes-Barre Area for the 1997 ozone NAAQS as a revision to the Pennsylvania 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.*);
- 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 PADEP’s second maintenance plan for the Scranton-Wilkes-Barre Area for the 1997 ozone 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 3, 2021

Diana Esher,
Acting Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 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 the entry “Second Maintenance Plan for the Scranton-Wilkes-Barre 1997 8-Hour Ozone Nonattainment Area” at the end of the table to read as follows:

§ 52.2020 Identification of plan.

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(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *				
Second Maintenance Plan for the Scranton-Wilke-Barre 1997 8-Hour Ozone Nonattainment Area	Scranton-Wilkes-Barre Area	3/10/20	[insert date of publication in the Federal Register], [insert Federal Register citation]	Scranton/Wilkes-Barre Area: Lackawanna, Luzerne, Monroe and Wyoming Counties

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