



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2019-0616; FRL-10018-28-Region 6]

Air Plan Approval; Arkansas; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) submission from the State of Arkansas (State) for the 2015 Ozone (O_3) National Ambient Air Quality Standards (NAAQS). The State's submission addresses structural SIP requirements for implementation, maintenance, and enforcement of the 2015 O_3 NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the Arkansas SIP is adequate to meet the State's responsibilities under the CAA for this NAAQS. We are also approving changes to certain existing State regulations to make them consistent with requirements for the 2015 O_3 NAAQS.

DATES: This 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-R06-OAR-2019-0616. 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, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Robert M. Todd, EPA Region 6 Office, Infrastructure & Ozone Section, 214-665-2156, todd.robert@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our June 30, 2020, proposal (85 FR 39128). In that document we proposed to approve elements of a SIP submission from the State of Arkansas for the 2015 O₃ NAAQS. Specifically, we proposed to approve the Arkansas i-SIP submission because it demonstrates compliance with CAA sections 110(a)(1) and 110(a)(2)(A) through (C) and (E) through (M), as applicable. We also proposed that Arkansas’ i-SIP submission demonstrates compliance with CAA section 110(a)(2)(D)(i)(II), Interference with Prevention of Significant Deterioration (often referred to as prong 3) and CAA section 110(a)(2)(D)(ii), Interstate Pollution Abatement (which refers to CAA section 126) and International Air Pollution (which refers to CAA section 115). EPA intends to address the remaining portions of the October 4, 2019, infrastructure SIP submission, addressing CAA section 110(a)(2)(D)(i)(I), often referred to as interstate transport prongs 1 and 2, and CAA section 110(a)(2)(D)(i)(II), often referred to as interstate transport prong 4, in separate actions.¹ We also proposed to approve changes to the State’s Regulation 19 definition of “National Ambient Air Quality Standards” and Appendix B of the Regulation 19 to be consistent with the 2015 O₃ NAAQS. We received comments on the proposed approval from one commenter

¹ Earlier this year we proposed to approve the Arkansas submittal for interstate transport prong 4 (visibility protection). See 85 FR 14847 (March 16, 2020).

(“Commenter”). The comments are posted and available through the regulations.gov website (Docket EPA-R06-OAR-2019-0616). The comments and our responses follow.

II. Response to Comments

Comment: The commenter states that EPA should not approve the state’s infrastructure SIP submission because it is “inconsistent with federal laws.”

Response: EPA disagrees with this comment. The commenter does not identify the specific requirements that the state has not met, nor do they explain the basis for this concern. As explained in the proposal for this action, and in this final action, EPA has evaluated the state’s infrastructure SIP submission for compliance with the statutory requirements of CAA section 110(a)(1) and (2), as applicable, and in light of the agency’s 2013 guidance for infrastructure SIP submissions². This is the federal law and guidance that is relevant in the context of a state’s infrastructure SIP submission. The agency has concluded in this action that the state has met the infrastructure SIP requirements for the 2015 O₃ NAAQS.

Comment: The commenter asserts that EPA must make sure the State is implementing its SIP.

Response: In acting on infrastructure SIP submissions, EPA is required to evaluate the submitting state's SIP for compliance with statutory and regulatory structural SIP requirements, not for the state's implementation of its SIP. See Montana Envtl. Info. Ctr. v. Thomas, 902 F.3d 971 (9th Cir. 2018). To the extent there were any concerns with respect to the state’s implementation of the 2015 O₃ NAAQS, EPA has other authorities to address such concerns. For example, the CAA provides the EPA the authorities to issue a SIP call, under section 110(k)(5) to correct SIP inadequacies; to make a finding of failure to implement and impose appropriate sanctions against the state, under sections 110(m) and 179(a)(4) of the Act, if the EPA finds the state fails to implement any requirement of an approved SIP; and to take measures to address specific permit deficiencies pursuant to the EPA’s case-by-case permitting oversight and

² “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.

enforcement authorities under sections 165(a)(2) and 167 of the Act. The appropriateness of employing these authorities depends on the nature and extent of the implementation problems at issue.

Also, the commenter did not provide an example of which part of the SIP the ADEQ is not currently implementing. As discussed in our proposal, ADEQ maintains an adequate monitoring program, has a permitting program, adopts rules as necessary, conducts inspections, investigations and takes enforcement actions when appropriate. EPA performs oversight of the air program through the annual air monitoring network plan review, midyear and end of year reviews on the Section 103 and 105 grants programs, and enforcement framework reviews of the state's enforcement programs. EPA also maintains on-going communications with the state, providing input on implementation issues, and sharing guidance and information through regular conference calls. A lack of adequate funding for the ADEQ's operation would impact implementation of programs we regularly discuss and review with the state. Such concerns have not been noted by the EPA.

Comment: The commenter questioned EPA's approval of the infrastructure SIP because EPA must review "the finances" of the state agency implementing the SIP to "ensure the financial health of the agency."

Response: EPA agrees that in order to address the requirements of section 110(a)(2)(E)(i), states must establish that they have adequate funding to implement their SIP. Accordingly, EPA did evaluate this element. In its infrastructure SIP submission, the state indicated it has met the requirements of the CAA. Section 110(a)(2)(E) requires that the state provide for adequate personnel, funding, and legal authority to carry out its SIP. Ark. Code Ann. § 8-1-103(1)(A), § 8-1-103(3) and § 8-1-103(5) grants ADEQ the authority to establish, and collect fees for issuance, annual review, and modification of air permits. Regulation No. 9, Fee Regulation, Chapter 5, contains the air permit fees applicable to non-part 70 permits, part 70 permits, and general permits. Ark. Code Ann. § 8-1-202(b)(2)(D) states that the Director of ADEQ's duties include

the day-to-day administration of all activities that the Department is empowered to perform by law, including, but not limited to, the employment and supervision of such technical, legal, and administrative staff, within approved appropriations, as is necessary to carry out the responsibilities vested with ADEQ.

Moreover, the State receives federal grants under CAA sections 103 and 105 to assist it in carrying out the SIP. Section 103 funding supports specific, non-recurring projects within the air program and thus, the amount of funding can vary widely from year to year. Section 105 supports the foundation of the State's air quality program, including the air monitoring network and annual air quality program activities. Section 105 funding levels are relatively consistent, varying not more than about 10% from year to year. Section 105 funds require a 40% match from the State, while section 103 funds do not require a match. During the upcoming fiscal year (FY2021), ADEQ will receive \$1,139,737 in section 105 grant funding. For FY2020/2021 ADEQ will receive \$1,137,068 in section 103 grant funding. This federal funding supplements the state's air program implementation funding mechanisms.

As explained in the proposal, EPA has concluded that ADEQ has adequate personnel, funding, and authority through these provisions in order to carry out the state's implementation plan.

Comment: The commenter supported concerns about the adequacy of the State agency's funding with statements attributed to the State's Governor.

Response: The commenter did not provide enough information for the EPA to be able to verify the quote or its context. The EPA of course agrees with the statements attributed to the Governor that state agencies need adequate funding to protect public health and the environment. Regardless, even taken at face value the EPA does not believe that the statement establishes that the State in fact has inadequate resources for the purposes of implementing the State's SIP. As previously explained, the EPA has considered the resources of the State as established in the infrastructure SIP submission and considers them adequate at this time.

Comment: The commenter further asserted that the EPA should disapprove the State's infrastructure SIP for the 2015 O₃ NAAQS based on concerns about the impacts that the COVID-19 pandemic will have on the State's finances and staff for implementing the SIP.

Response: The EPA acknowledges the commenter's concern that the ongoing COVID-19 pandemic may have negative impacts on the State maintaining adequate resources to meet its SIP obligations. As discussed above, EPA has concluded that Arkansas has provided assurances in the infrastructure SIP submission for the 2015 O₃ NAAQS that it has adequate personnel and funding to carry out its SIP obligations at this time. For these reasons, EPA does not agree that it must disapprove the infrastructure SIP submission. If the adequacy of Arkansas' resources to carry out its SIP is substantially affected in the future, EPA has the statutory authority to address this issue through means other than disapproving the infrastructure SIP submission at this time.

III. Final Action

We are approving portions of the October 25, 2018, Arkansas i-SIP submittal for the 2015 O₃ NAAQS as detailed in Table 1 of this final action. The agency will take action on those portions of the submission addressing CAA section 110(a)(2)(D)(i)(I), prongs 1 and 2, Significant Contribution to Nonattainment and Interference with Maintenance in other states, and CAA section 110(a)(2)(D)(i)(II), prong 4, Interference with Visibility Protection in other states in separate, future actions.

Table 1: Final Action on Arkansas Infrastructure and Transport SIP Submittals for the 2015 Ozone NAAQS

Element	Proposed Action
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)(i): Enforcement of SIP measures	A
(C)(ii): PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2)	SA
(D)(i)(II): PSD (prong 3)	A
(D)(i)(II): Visibility Protection (prong 4)	SA
(D)(ii): Interstate and International Pollution Abatement	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A

(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

Key to Table 1:

A: Approved

+: Not germane to infrastructure SIPs

SA: EPA is acting on this infrastructure requirement in a separate rulemaking action.

Based upon our review of the State's infrastructure SIP submission for the 2015 O₃ NAAQS and relevant statutory and regulatory authorities and provisions referenced in this submission or referenced in the EPA-approved Arkansas SIP, EPA finds that the state has established that it has met the infrastructure SIP requirements of CAA sections 110(a)(1) and (2), as applicable, except as noted in Table 1 of this final action.

We are also approving the submitted changes to the state's Regulation 19 Definitions and Appendix B that reference the 2015 O₃ NAAQS.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of a revision to Regulation 19, Chapter 2, Definitions and Appendix B, Regulations of the Arkansas Plan of Implementation for Air Pollution control. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 6 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of

the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. 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);
- 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, 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, 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).

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 Clean Air Act, 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, Ozone.

Dated: February 5, 2021.

David Gray,
Acting Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency 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 E – Arkansas

2. Amend §52.170 by:

- a. In paragraph (c) in the table titled “EPA-Approved Regulations in the Arkansas SIP”:

- i. Revising the entry for Regulation 19, Chapter 2 (Definitions) and
 - ii. Revising the entry for Regulation 19, Appendix B (National Ambient Air Quality

Standards List).

- b. In paragraph (e), in the table titled “EPA-Approved Non-regulatory Provisions and Quasi-Regulatory Measures in the Arkansas SIP” adding an entry at the end for “Infrastructure for the 2015 O₃ NAAQS”.

The revisions and additions read as follows:

§52.170 Identification of plan.

* * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP

State Citation	Title/Subject	State approval/ submittal date	EPA approval date	Explanation
Regulation No. 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control				
* * * * *				
Chapter 2: Definitions				

Chapter 2	Definitions	9/27/2019	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
Appendix B: National Ambient Air Quality Standards List				
Appendix B	National Ambient Air Quality Standards List	9/27/2019	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				

(e) * * *

EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP

Control measures	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation

Infrastructure for the 2015 O ₃ NAAQS	Statewide	9/27/2019	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Approval for 110(a)(2)(A), (B), (C), (D)(i)(portion pertaining to PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).