



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2022-0580; FRL-11047-02-R5]

**Air Plan Approval; Ohio; Approval of the Muskingum River SO₂
Attainment Plan**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), a revision to the Ohio State Implementation Plan (SIP) intended to provide for attainment of the 2010 primary, health-based 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS or standard) for the Muskingum River SO₂ nonattainment area. This SIP revision (hereinafter referred to as Ohio's Muskingum River SO₂ attainment plan or plan), includes Ohio's attainment demonstration and other attainment planning elements required under the CAA. EPA is finding that Ohio has appropriately demonstrated that the plan provides for attainment of the 2010 1-hour primary SO₂ NAAQS in the Muskingum River, Ohio nonattainment area and that the plan meets the other applicable requirements under the CAA. EPA is also incorporating by reference Ohio Director's Final Findings and Orders (DFFOs), issued on May 23, 2023, into the Ohio SIP. The DFFOs set forth additional requirements at Globe Metallurgical (Globe) to verify appropriate source characterization for modeling purposes.

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 No. EPA-R05-OAR-2022-0580. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, i.e., 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 either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Gina Harrison, Environmental Scientist, at (312) 353-6956 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Gina Harrison, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6956, *harrison.gina@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background

On January 18, 2022 (87 FR 2555), EPA partially approved and partially disapproved Ohio's SO₂ plan for the Muskingum River area submitted on April 3, 2015, and October 13, 2015, and supplemented on June 23, 2020. EPA's January 18, 2022, final rule provided an explanation of the applicable provisions in the CAA and the measures and limitations identified in Ohio's attainment plan to satisfy these provisions.

The partial disapproval started sanctions clocks for this area under CAA section 179(a)-(b), including a requirement for 2-for-1 offsets for any major new sources or major modifications 18 months after the effective date of this action, and highway funding sanctions 6 months thereafter, as well as initiated an obligation for EPA to promulgate a Federal Implementation Plan (FIP) within 24 months, under CAA section 110(c).

Ohio supplemented the attainment demonstration on June 24, 2022, substituting new measures in lieu of a land acquisition and modifying the air quality modeling to include the use of site-specific meteorological data. Ohio submitted additional supplemental information on July 28, 2022, and May 23, 2023, including revised DFFOs for Globe, issued on May 23, 2023, that supersede the June 23, 2020 DFFOs.

II. Proposed Rule

On June 22, 2023 (88 FR 40726), EPA proposed to approve Ohio's SIP attainment plan submission for the Muskingum River SO₂ nonattainment area, which the state submitted to EPA on April 3, 2015, October 13, 2015, and June 23, 2020, and supplemented on

June 24, 2022, July 28, 2022, and May 23, 2023. The SO₂ attainment plan included Ohio's attainment demonstration for this area. The attainment plan also addressed requirements for emission inventories, reasonably available control measures (RACM) and reasonably available control technology (RACT), reasonable further progress (RFP), and contingency measures. Ohio has previously addressed requirements regarding nonattainment area new source review. Because Ohio's submission provides an appropriate testing requirement to confirm the modeling, EPA has determined that Ohio's SO₂ attainment plan for the Muskingum River SO₂ nonattainment area meets the applicable requirements of CAA sections 110, 172, 191, and 192.

A key element of Ohio's attainment plan is Ohio's revised DFFOs, issued to Globe on May 23, 2023. Among other requirements, Ohio's DFFOs retain SO₂ emission limits for Globe set forth in the 2020 DFFOs as a matrix of limits based on 26 separate operating scenarios at the two baghouses, where each of the 26 scenarios was modeled to demonstrate attainment and maintenance of the SO₂ standard. As part of the proposed approval of Ohio's attainment plan for this area, EPA proposed to approve Ohio's May 23, 2023, DFFOs for the Globe facility into the SIP. These DFFOs supersede the previous 2020 DFFOs, retain the SO₂ limits and other requirements set forth in the 2020 DFFOs, and require additional testing, monitoring, and confirmation of certain flow parameters for verification of source modeling characterization. For the reasons discussed in

the proposed rule, EPA finds that these requirements are sufficient for the required attainment plan demonstration.

III. Public Comments

The public comment period for EPA's proposed rule ended on July 24, 2023. EPA received no comments on the proposal.

IV. Final Action

EPA is approving Ohio's SIP attainment plan submission for the Muskingum River SO₂ nonattainment area, which the state previously submitted to EPA on April 3, 2015, October 13, 2015, and June 23, 2020, and supplemented on June 24, 2022, July 28, 2022, and May 23, 2023. This SO₂ attainment plan included Ohio's attainment demonstration for this area. The attainment plan also addressed requirements for emission inventories, RACT/RACM, RFP, and contingency measures. By this action, EPA is codifying its approval of both Ohio's May 23, 2023, DFFOs issued to Globe and Ohio's attainment plan for the Muskingum River SO₂ nonattainment area.

This approval terminates the highway funding sanction and FIP clocks started under CAA section 179 resulting from EPA's partial disapproval of the prior SIP. It also removes the permitting offset sanction that has been in place since August 17, 2023.

V. Incorporation by Reference.

In this rule, 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 the Ohio Regulations described in section II of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov*, and at the EPA Region 5 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 EPA for inclusion in the SIP, have been incorporated by reference by 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 EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

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 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

¹ 62 FR 27968 (May 22, 1997).

12866 (58 FR 51735, and 14094 (88 FR 21879, April 11, 2023);

- 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

Ohio EPA did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of

achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 31, 2023.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, title 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.*

2. In § 52.1870:

a. Amend the table in paragraph (d) by adding an entry for "Globe Metallurgical, Inc." before the entry for "Hilton Davis".

b. Amend the table in paragraph (e) under the heading "Summary of Criteria Pollutant Attainment Plans" by revising the entry entitled "SO₂ (2010)" for "Muskingum River".

The addition and revision read as follows:

§ 52.1870 Identification of plan.

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(d) * * *

EPA APPROVED OHIO SOURCE-SPECIFIC PROVISIONS

Name of source	Number	Ohio effective date	EPA Approval date	Comments
* * *	* * *	* * *	* * *	
Globe Metallurgical Inc.	DFFOs	5/23/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
* * *	* * *	* * *	* * *	

(e) * * *

EPA APPROVED- OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments

* * * * *				
Summary of Criteria Pollutant Attainment Plans				
* * * * *				
SO ₂ (2010)	Muskingum River	5/24/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
* * * * *				

3. Section 52.1873 is amended by removing and reserving paragraph (b).

[FR Doc. 2023-19201 Filed: 9/7/2023 8:45 am; Publication Date: 9/8/2023]