

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA–R03–OAR–2021–0479; FRL–10665–01–R3]

**Air Plan Approval; Pennsylvania; Infrastructure State Implementation Plan Revision Clean Air Act Section 110 Applicable Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. Whenever EPA promulgates a new or revised national ambient air quality standard (NAAQS or standard), the Clean Air Act (CAA) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. 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. Pennsylvania has formally submitted a SIP revision addressing the following infrastructure elements, or portions thereof, of certain sections of the CAA for the 2015 8-hour ozone NAAQS. EPA is proposing to approve Pennsylvania's submittal addressing the infrastructure requirements for the 2015 ozone NAAQS in accordance with the requirements of the CAA apart from visibility protection, which was not submitted with the current action.

**DATES:** Written comments must be received on or before March 29, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2021–0479 at [www.regulations.gov](http://www.regulations.gov), or via email to [Gordon.Mike@epa.gov](mailto:Gordon.Mike@epa.gov). For comments submitted at [Regulations.gov](http://Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://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 [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** On April 20, 2021, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its SIP to satisfy most of the requirements of section 110(a) of the CAA for the 2015 ozone NAAQS.

**I. Background**

Under the CAA, EPA establishes NAAQS for criteria pollutants to protect human health and the environment. On October 26, 2015, EPA issued a final rule revising both the primary and secondary ozone NAAQS for ground-level ozone to 0.070 parts per million (ppm), based on the fourth-highest maximum daily 8-hour ozone concentration per year, averaged over three years. 80 FR 65292.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable, within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(1) of the CAA provides the procedural and timing requirements for SIPs, while section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring,

basic program framework and adequate legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The content of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2015 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 and 2008 ozone NAAQS.

Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.<sup>1</sup> Unless otherwise noted below, EPA is following that existing approach in acting on Pennsylvania's submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.<sup>2</sup> EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

**II. Summary of SIP Revision and EPA Analysis**

On April 20, 2021, the Commonwealth of Pennsylvania formally submitted, through PADEP, a SIP revision to satisfy the infrastructure requirements of CAA section 110(a) for the 2015 ozone NAAQS (referred to as “Pennsylvania's submittal”).

<sup>1</sup> EPA explains and elaborates on these ambiguities and its approach to address them in “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 (also referred to as “2013 Infrastructure Guidance”), included in the docket for this rulemaking action available at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA–R03–OAR–2021–0479.

<sup>2</sup> See *Mont. Env'tl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

Pennsylvania's submittal addresses the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration (PSD)), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Pennsylvania's submittal does not address the following elements of CAA section 110(a)(2): sub-element (D)(i)(I) related to interstate transport; and element (I), which pertains to the nonattainment requirements of part D, title I of the CAA. Also, the Pennsylvania infrastructure SIP submittal addressed the PSD portion of section 110(a)(2)(D)(i)(II) but provided only narrative context regarding the history of the visibility protection portion of section 110(a)(2)(D)(i)(II). Therefore, EPA is not taking action on the visibility protection element of 110(a)(2)(D)(i)(II) at this time.

With respect to element (I), according to EPA's 2013 Infrastructure Guidance, element (I) pertains to part D of title I of the CAA, which addresses SIP requirements and submission deadlines for areas designated nonattainment for a NAAQS. This element pertains to SIP revisions that are collectively referred to as nonattainment SIPs or attainment plans. Such SIP revisions are required if an area is designated nonattainment and, if required, would be due to EPA by the dates statutorily prescribed in CAA part D, subparts 2 through 5. Because the CAA directs states to submit these plan elements on a separate schedule, EPA does not believe it is necessary for states to include these elements in the infrastructure SIP submission due three years after adoption or revision of a NAAQS.<sup>3</sup> Pennsylvania's submittal also did not address the portion of CAA section 110(a)(2)(D)(i)(I) related to interstate transport for the 2015 ozone NAAQS. Therefore, EPA is not proposing any action related to Pennsylvania's obligations under section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Based upon EPA's review of Pennsylvania's submittal, EPA is proposing to determine that Pennsylvania's submittal satisfies the infrastructure elements of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2015 ozone NAAQS.

A detailed summary of EPA's review and rationale for approving Pennsylvania's submittal may be found in the technical support document

(TSD) for this proposed rulemaking action included in the docket for this rulemaking action and available at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2021-0479.

### III. Proposed Action

EPA is proposing to find that Pennsylvania's April 20, 2021 submittal satisfies the following infrastructure requirements of CAA section 110(a) for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD), (D)(ii), (E) (F), (G), (H), (J), (K), (L), and (M). Pennsylvania's submittal did not address the following infrastructure elements: CAA section 110(a)(2)(D)(i)(I) related to interstate transport; and CAA section 110(a)(2)(I) pertaining to the nonattainment requirements of part D, title I of the CAA. Therefore, EPA is not taking action on these elements. Furthermore, Pennsylvania's submittal included only narrative historical information pertaining to the visibility protection element of section 110(a)(2)(D)(i)(II). Therefore, EPA is not taking action on that element at this time. EPA is soliciting public comments on the approvability of these infrastructure SIP elements as set forth here and in the Technical Support Document in the docket for this action. These comments will be considered before taking final action. Please refer to the TSD for this rulemaking which is available online at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R03-OAR-2021-00479, for further discussion of each element being associated with this approval.

### IV. 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 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);

- 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 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 proposed rulemaking, pertaining to Pennsylvania's 110 (a) infrastructure requirements for the 2015 ozone NAAQS, 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.

### 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.

**Adam Ortiz,**

*Regional Administrator, Region III.*

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<sup>3</sup> See "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, for reference.