

Dated: May 20, 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 SS—Texas

- 2. In § 52.2270(c), amend the table titled “EPA Approved Regulations in the Texas SIP” by revising the entries for “Section 114.622” and “Section 114.629” to read as follows:

### § 52.2270 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

## EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submission date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
<b>Chapter 114 (Reg 4)—Control of Air Pollution From Motor Vehicles</b>				
* * *	* * *	* * *	* * *	* * *
<b>Subchapter K—Mobile Source Incentive Programs</b>				
Section 114.622 .....	Incentive Program Requirements ..	6/10/2020	5/27/2021, [Insert Federal Reg- ister citation].	
* * *	* * *	* * *	* * *	* * *
Section 114.629 .....	Affected Counties and Implemen- tation Schedule.	6/10/2020	5/27/2021, [Insert Federal Reg- ister citation].	
* * *	* * *	* * *	* * *	* * *

\* \* \* \* \*

[FR Doc. 2021-11182 Filed 5-26-21; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2020-0320; FRL-10023-70-Region 3]

### Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Youngstown-Warren-Sharon 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”) for the Youngstown-

Warren-Sharon Area (Youngstown Area) of Pennsylvania. EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on June 28, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0320. 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:** Keila M. Pagán-Incle, 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) 814-2926. Ms. Pagán-Incle can also be reached via electronic mail at [pagan-incle.keila@epa.gov](mailto:pagan-incle.keila@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. Background

On October 30, 2020 (85 FR 68826), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania, which was later reopened to public comment on March 1, 2021 (86 FR 11915). In the NPRM, EPA proposed approval of Pennsylvania’s plan for maintaining the 1997 ozone NAAQS in the Youngstown Area through November 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 October 19, 2007 (72 FR 59213, effective November 19, 2007), EPA approved a redesignation request (and maintenance plan) from PADEP for the Youngstown Area. Per CAA 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*,<sup>1</sup> the D.C. Circuit held that this requirement cannot be waived for areas, like the Youngstown Area, that had been redesignated to attainment for the 1997 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.<sup>2</sup> PADEP's March 10, 2020 SIP submittal fulfills Pennsylvania's obligation to submit a second maintenance plan and addresses each of the five necessary elements.

As discussed in the October 30, 2020, NPRM, consistent with longstanding EPA's guidance,<sup>3</sup> areas that meet certain criteria may be eligible to submit a limited maintenance plan (LMP) to satisfy one of the requirements of CAA section 175A. Specifically, states may meet CAA section 175A's requirements to "provide for maintenance" by demonstrating that an area's design values<sup>4</sup> are well below the NAAQS and that it has had historical stability attaining the NAAQS. EPA evaluated Pennsylvania'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 Youngstown 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 two comments on the October 30, 2020 NPRM, which were not related to air quality issues, and one relevant comment on the March 1, 2021 reopened NPRM. All comments received are in the docket for this rulemaking action.

#### Comment

The commenter asserts that the LMP should not be approved because "Pennsylvania identifies no actual contingency measures." According to the commenter, a "contingency measure is supposed to be a known measure that can be quickly implemented by a state in order to prevent the violation of the NAAQS." The comment asserts that current contingency measures are defective because they allegedly will not be evaluated and determined until after an exceedance of the NAAQS has occurred, and that a "contingency measure must be clearly identified and not an abstract promise of determining, at a later date, whether measures are needed and what measures would be proposed."

The comment claims that EPA is aware Pennsylvania has a history of not meeting its CAA requirements on time, and that it can take Pennsylvania more than two years to implement a regulation, which would be too long to prevent a violation of the NAAQS. Further, the commenter asserts that the EPA should disapprove "a state's contingency plan that merely promises to later review conditions, determine whether measures are necessary and what they should be, and then implement them."

#### Response

The commenter asserts that Pennsylvania identifies no actual contingency measures because the measures are not yet "evaluated" and "determined" and cannot be implemented before a violation of the NAAQS occurs. Because Pennsylvania identifies two regulatory and six non-regulatory contingency measures in general terms, EPA understands the comment's use of the term "evaluated" and "determined" must mean something like the specific measures identified by PADEP have not been fully promulgated and are not in effect at this

time. If EPA's understanding is correct, EPA agrees with this fact, but does not agree that this has any bearing on the approvability of the contingency measures or of the overall LMP.

PADEP identifies six non-regulatory measures and two regulatory measures. The two regulatory measures are "additional controls" on consumer products and portable fuel containers. The six non-regulatory measures are: Voluntary diesel engine "chip reflash;" diesel retrofit for public or private local onroad or offroad fleets; idling reduction technology for Class 2 yard locomotives; idling technologies or strategies for truck stops, warehouses, and other freight-handling facilities; accelerated turnover of lawn and garden equipment; additional promotion of alternative fuel for home heating and agriculture use. As stated in the Calcagni memo, EPA's long-standing interpretation is that contingency measures for maintenance of the NAAQS are not required to be fully adopted in order to be approved. The commenter refers to a recent court case vacating, among other things, the contingency measure provisions in EPA's rule for implementing the 2015 ozone NAAQS, *Sierra Club v. EPA*, No. 15-1465 (D.C. Cir. January 29, 2021). It is possible that the commenter has conflated the contingency measure provisions at issue in that case, which pertained to attainment plans, and those at issue in this LMP, which pertain to maintenance plans. The contingency measure provisions for maintenance and attainment are found in two different sections of the CAA, with substantially different wording and requirements. The attainment plan contingency measures provisions in CAA Section 172(c)(9) require that the attainment plan have "specific measures" that can "take effect in any such case without further action by the State or the Administrator" if the area fails to make reasonable further progress or attain the NAAQS. 42 U.S.C. 7502(c)(9). Section 175A of the CAA sets forth the contingency measure requirements for maintenance areas. Section 175A(d) requires that the maintenance plan contain "such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area." 42 U.S.C. 7505a(d). Unlike Section 172(c)(9) there is no requirement under section 175A that the contingency measures be set forth with specificity or that they be able to take effect without further action by EPA or the State.

<sup>1</sup> 882 F.3d 1138 (D.C. Cir. 2018).

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

<sup>3</sup> See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas" from Lydia Wegman, OAQPS, dated August 9, 2001.

<sup>4</sup> 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.

With this statutory background in mind, EPA does not agree that the plan should be disapproved due to PADEP's ability to promulgate a contingency measure in sufficient time to avert a violation of the NAAQS. As noted previously, CAA section 175A(d) mandates that a maintenance plan must contain "such contingency provisions as the Administrator deems necessary to assure that the State will promptly *correct any violation* of the standard which occurs after the redesignation of the area as an attainment area." (emphasis added). The statute therefore does not include any requirement that a maintenance plan's contingency measures *prevent* a violation of the NAAQS, but rather only that those selected measures be available to address a violation of the NAAQS after it already occurs. Pennsylvania also elected to adopt a "warning level response," which states that PADEP will consider adopting contingency measures if, for two consecutive years, the fourth highest eight-hour ozone concentrations at any monitor in the area are above 84 parts per billion (ppb). But this warning level response is not required under the CAA, and therefore we do not agree with the commenter that the plan should be disapproved based on the commenter's concern over the timeliness of the warning level response implementation.

Moreover, as a general matter, we do not agree that the schedules for implementation of contingency provisions in the LMP are insufficient. As noted, the CAA provides some degree of flexibility in assessing a maintenance plan's contingency measures—requiring that the plan contain such contingency provisions "as the Administrator deems necessary" to assure that any violations of the NAAQS will be "promptly" corrected. EPA's longstanding guidance for redesignations, the Calcagni Memo, also does not provide precise parameters for what strictly constitutes "prompt" implementation of contingency measures, noting that, for purposes of CAA section 175A, "a state is not required to have fully adopted contingency measures that will take effect without further action by the state in order for the maintenance plan to be approved." Calcagni memo at 12. However, the guidance does state that the plan should ensure that the measures are adopted "expediently" once they are triggered, and should provide "a schedule and procedure for adoption and implementation, and a specific time limit for action by the state." *Id.* We think the State's plan,

which provides specific lists of regulatory and non-regulatory measures (not a "promise" to determine measures at a later date) that the state would consider after evaluating and assessing what it believed to be the cause of increased ozone concentrations, and the specific timeframes it would use to expediently implement the various measures, meets the requirements of CAA section 175A.

#### IV. Final Action

EPA is approving the 1997 ozone NAAQS limited maintenance plan for the Youngstown Area 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);
- 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 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 July 26, 2021. 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 pertaining to Pennsylvania's limited maintenance plan for the Youngstown Area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52 May 27, 2021 June 28, 2021 July 26, 2021**

Environmental protection, Air pollution control, Incorporation by

reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: May 19, 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

for “1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Youngstown-Warren-Sharon Area” at the end of the table to read as follows:

#### § 52.2020 Identification of plan.

*	*	*	*	*
(e)	*	*	*	*
(1)	*	*	*	*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Youngstown-Warren-Sharon Area.	Youngstown-Warren-Sharon Area.	3/10/20	5/27/21, [insert <b>Federal Register</b> citation].	The Youngstown-Warren-Sharon area consists of Youngstown borough in Westmoreland County, Warren County, and Sharon, a city in Mercer County.

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[FR Doc. 2021-11166 Filed 5-26-21; 8:45 am]

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## GENERAL SERVICES ADMINISTRATION

[GSAR Case 2020-G525; Docket No. 2021-0012; Sequence No. 1]

RIN 3090-AK26

### General Services Administration Acquisition Regulation; Personal Identity Verification Requirements Clarification

**AGENCY:** Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Direct final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to clarify the requirements for Personal Identity Verification (PIV). This direct final rule revises a GSAR clause to provide a more specific reference to the location of the GSA credentialing handbook. GSA is also moving language addressing internal operating procedures around option exercise from the GSAR to the non-regulatory General Services Administration Acquisition Manual (GSAM).

**DATES:** This direct final rule is effective on July 26, 2021 without further notice unless adverse comments are received. Interested parties should submit written comments to the Regulatory Secretariat as noted below on or before June 28, 2021 to be considered in the formation of the final rule. If GSA receives adverse

comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit comments in response to GSAR Case 2020-G525 to: Regulations.gov: <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “GSAR Case 2020-G525”. Select the link “Comment Now” that corresponds with GSAR Case 2020-G525. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “GSAR Case 2020-G525” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

**Instructions:** Please submit comments only and cite GSAR Case 2020-G525, in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Ms. Vernita Misidor, Procurement Analyst, at 202-357-9681 or email at [gsarpolicy@gsa.gov](mailto:gsarpolicy@gsa.gov), for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite GSAR Case 2020-G525.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Following internal procurement management reviews, GSA identified the need to improve certain credentialing administration processes for contractors. GSA is amending the GSAR to clarify the personal identity verification requirements in GSAR Clause 552.204-9. The clause currently references a very broad credentialing website, which does not clearly identify the requirements for contractors to follow.

## II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

## III. Discussion of the Rule

GSA is amending the GSAR to specifically reference the Office of Mission Assurance CIO P 2181.1 GSA HSPD-12 Personal Identity Verification and Credentialing Handbook rather than just the general website for credentialing. The change to reference the Handbook will allow for contractor personnel to easily find the information needed related to PIV cards and will eliminate issues that could arise in the event that the website link becomes broken. GSA is also moving text dealing with the exercise of options from the GSAR to the non-regulatory GSAM. This move is being made because the language only addresses responsibilities of Contracting Officers in preparing documentation. As such, it is not regulatory material.