

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

[EPA-R02-OAR-2014-0683, FRL-9928-39-Region 2]

**Approval and Promulgation of Implementation Plans; New York; Infrastructure SIP for the 2008 Lead NAAQS****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving certain elements of New York's State Implementation Plan (SIP) revision submitted to demonstrate that the State meets the requirements of the Clean Air Act (CAA) for the 2008 National Ambient Air Quality Standard (NAAQS) for lead (Pb). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an infrastructure SIP.

**DATES:** This rule is effective on *July 1, 2015*.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2014-0683. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., 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 electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. The Air Programs Branch dockets are available from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Air Programs Branch telephone number is 212-637-4249.

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249, or by email at [wieber.kirk@epa.gov](mailto:wieber.kirk@epa.gov).

**SUPPLEMENTARY INFORMATION:**

I. What is the background information?

- II. What comments did EPA receive in response to its proposal?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

**I. What is the background information?**

On November 12, 2008, EPA promulgated a new, rolling 3 month average NAAQS for Pb, herein referred to as the 2008 Pb NAAQS. See 73 FR 66964.<sup>1</sup> The 2008 Pb NAAQS is 0.15 micrograms per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ) maximum (not-to-be-exceeded). In the same action EPA revised the secondary Pb NAAQS to be identical in all respects to the revised primary standard, i.e., 0.15  $\mu\text{g}/\text{m}^3$ .

Section 110(a)(1) provides the procedural and timing requirements for State Implementation Plans (SIPs). Section 110(a)(2) lists specific elements that states must meet for SIP requirements related to a newly established or revised NAAQS. Sections 110(a)(1) and (2) of the CAA require, in part, that states submit to EPA plans to implement, maintain and enforce each of the NAAQS promulgated by EPA. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. These SIPs are commonly called infrastructure SIPs. Based on the October 15, 2008 date of signature for the 2008 Pb NAAQS, infrastructure SIPs for the 2008 Pb NAAQS were due on October 15, 2011.

EPA is acting on New York's SIP submittal dated October 13, 2011, as supplemented on February 24, 2012, which addresses the section 110 infrastructure requirements for the 2008 Pb NAAQS. Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to CAA section 191. (See also CAA section 172 for general nonattainment plan requirements). These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section

<sup>1</sup> Final rule signed October 15, 2008. The 1978 lead standard (1.5  $\mu\text{g}/\text{m}^3$  as a quarterly average) remains in effect until one year after an area is designated for the 2008 standard, except that in areas designated nonattainment for the 1978 lead standard, the 1978 standard remains in effect until implementation plans to attain or maintain the 2008 standard are approved.

110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA.

As a result, this action does not address the nonattainment area plan requirements related to section 110(a)(2)(C) or 110(a)(2)(I).

**II. What comments did EPA receive in response to its proposal?**

On December 15, 2014 (79 FR 74046), EPA proposed to approve New York's SIP submittal addressing the section 110 infrastructure requirements for the 2008 Pb NAAQS. EPA received one adverse comment on the December 15, 2014 proposal. A synopsis of the adverse comment, as well as EPA's response is discussed below.

*Comment:* EPA must disapprove element C with regard to Prevention of Significant Deterioration (PSD) unless New York has the  $\text{PM}_{2.5}$  increments approved into its PSD SIP. As you may know, EPA's position is the issue of  $\text{PM}_{2.5}$  increments is relevant even if this is a lead infrastructure SIP.

*Response:* Element C requires that each infrastructure SIP contain a permitting program "as required by part C." CAA title I part C is applicable to all pollutants subject to regulation under the CAA. See, e.g., CAA section 165(a)(4). After further review EPA agrees that Element C is not restricted to only those provisions of CAA title I part C that pertain to the particular new or revised NAAQS addressed by the particular infrastructure SIP action. Because the scope of CAA title I part C is comprehensive (covering all pollutants subject to regulation under the CAA, including GHG), the EPA likewise reads the unrestricted reference to CAA title I part C in Element C to mean that this provision has the same scope as CAA title I part C itself. Thus, a fully approved comprehensive PSD program addressing all regulated pollutants is needed in order to approve the infrastructure SIP for any one pollutant.

NYSDEC has adopted and submitted to EPA for approval into its SIP, a PSD program that includes  $\text{PM}_{2.5}$  increments. However, the  $\text{PM}_{2.5}$  increments have not yet been approved by EPA. EPA will defer taking final action approving New York's infrastructure SIP submission with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II) prong 3, and (J) until EPA has approved, or simultaneously approves New York's adopted PSD program.

**III. What action is EPA taking?**

EPA is approving New York's submittal as fully meeting the infrastructure requirements for the 2008

primary Pb NAAQS for all section 110(a)(2) elements and sub-elements, as follows: (A), (B), (D)(i)(I) prongs 1 and 2, D(i)(II) prong 4, (E), (F), (G), (H), (K), (L), and (M). EPA is not finalizing action on 110(a)(2) elements and sub-elements, as follows: (C), (D)(i)(II) prong 3, and (J). EPA is not acting on New York's submittal as it relates to nonattainment provisions, the NSR program required by part D in section 110(a)(2)(C) and the measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs because the State's infrastructure SIP submittal does not include nonattainment requirements and EPA will act on them when, if necessary, they are submitted.

**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 Act 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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).

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 2015. 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, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 8, 2015.

**Judith A. Enck,**  
*Regional Administrator, Region 2.*

Part 52, chapter I, title 40 of the Code of Federal Regulations 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.*

**Subpart HH—New York**

- 2. In § 52.1670(e), the table titled "EPA-Approved New York Nonregulatory and Quasi-Regulatory Provisions" is amended by adding the entry "Section 110(a)(2) Infrastructure Requirements for the 2008 Primary Pb NAAQS" at the end of table, to read as follows:

**§ 52.1670 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS**

| Action/SIP element  | Applicable geographic or nonattainment area | New York submittal date                     | EPA approval date                                | Explanation  |
|---|---|---|--|--|
| *<br>Section 110(a)(2) Infrastructure Requirements for the 2008 Primary Pb NAAQS. | *<br>Statewide .....                        | *<br>10/13/11, and supplemented on 2/24/12. | *<br>6/1/15, .....<br>[Insert FR citation] ..... | *<br>This action addresses the following CAA elements: 110(a)(2)(A), (B), (D)(i)(I) prongs 1 and 2, D(i)(II) prong 4, (E), (F), (G), (H), (K), (L), and (M). |

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2014-0884; FRL-9928-42-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Determination of Attainment of the 2008 8-Hour Ozone National Ambient Air Quality Standard for the Baltimore, Maryland Moderate Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is making the determination that the Baltimore, Maryland Moderate Nonattainment Area (Baltimore Area) has attained the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured, and certified ambient air quality monitoring data that shows the Baltimore Area has monitored attainment of the 2008 8-hour ozone NAAQS for the 2012-2014 monitoring period. As a result of this determination, the requirement for the Baltimore Area to submit an attainment demonstration and associated reasonably available control measures (RACM), reasonable further progress plans (RFP), contingency measures, and other State Implementation Plan (SIP) revisions related to attainment of the standard are suspended for as long as the area continues to attain the 2008 8-hour ozone standard.

**DATES:** This final rule is effective on July 1, 2015.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0884. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, 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 electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection

Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** Irene Shandruk, (215) 814-2166, or by email at [shandruk.irene@epa.gov](mailto:shandruk.irene@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On March 12, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over three years) to provide increased protection of public health and the environment. 73 FR 16436 (March 27, 2008).<sup>1</sup> The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but is set at a more protective level. On May 21, 2012 (77 FR 30088), effective July 20, 2012, EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008-2010) of air monitoring data. The Baltimore Area (specifically, Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Harford County, and Howard County) was designated as a moderate ozone nonattainment area. See 40 CFR 81.321. Moderate areas are required to attain the 2008 8-hour ozone NAAQS by no later than six years after the effective date of designations, or July 20, 2018. See 40 CFR 51.903. Air quality monitoring data from the 2012-2014 monitoring period indicate that the Baltimore Area is now attaining the 2008 8-hour ozone NAAQS. On March 18, 2015 (80 FR 14041), EPA published a notice of proposed rulemaking (NPR), which proposed to determine that the Baltimore Area has attained the 2008 8-hour ozone NAAQS. Public comments were received on the NPR. Summaries of the comments as well as EPA's responses are in section III of this rulemaking notice.

Under the provisions of 40 CFR 51.1118,<sup>2</sup> also known as EPA's Clean Data Policy, a determination by EPA that an area is attaining the relevant standard (through a rulemaking that includes public notice and comment) suspends the area's obligations to

submit an attainment demonstration, RACM, RFP, contingency measures and other planning requirements related to attainment of the 2008 8-hour ozone NAAQS for as long as the area continues to attain the standard. This suspension remains in effect until such time, if ever, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 2008 8-hour ozone NAAQS. Although these requirements are suspended, EPA remains obligated under section 110(k)(2) to act upon these elements at any time if submitted to EPA for review and approval. On April 22, 2015, the Maryland Department of the Environment (MDE) sent correspondence to EPA indicating its intent to submit an attainment SIP for the 2008 8-hour ozone NAAQS.<sup>3</sup> This determination of attainment is not equivalent to a redesignation under section 107(d)(3) of the CAA. The designation status of the Baltimore Area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA determines that the Area meets the Clean Air Act (CAA) requirements for redesignation to attainment, including an approved maintenance plan. Additionally, the determination of attainment is separate from, and does not influence or otherwise affect, any future designation determination or requirements for the Baltimore Area based on any new or revised ozone NAAQS, and it remains in effect regardless of whether EPA designates this Area as a nonattainment area for purposes of any new or revised ozone NAAQS. Finally, this determination does not relieve other CAA requirements that are not related to attainment planning and achievement of the NAAQS, such as an emissions inventory as required by CAA section 172(c)(3) or a nonattainment area permitting program pursuant to CAA sections 172(c)(5) and 173.

##### II. EPA's Evaluation

EPA has reviewed the complete, quality-assured and certified ozone ambient air monitoring data for the monitoring period for 2012-2014 for the Baltimore Area. The design values for each monitor for the years 2012-2014 are less than or equal to 0.075 ppm which is the 2008 ozone NAAQS level, and all monitors meet the data completeness requirements (see Table

<sup>1</sup> For a detailed explanation of the calculation of the 3-year 8-hour average, see 40 CFR part 50, Appendix I.

<sup>2</sup> EPA issued its proposal to determine that the Baltimore Area was attaining the 2008 ozone NAAQS pursuant to 40 CFR 51.918, EPA's Clean Data Policy under the 1997 8-hour ozone implementation rule. On April 6, 2015, EPA's plan implementing the 2008 ozone NAAQS became effective, thereby replacing 40 CFR 51.918 with 40 CFR 51.1118, a functionally identical provision for purposes of this action. See 40 CFR 51.919.

<sup>3</sup> The April 22, 2015 letter from MDE is available in the docket for this rulemaking under docket number EPA-R03-OAR-2014-0884.