Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	* *	* *	* *
Infrastructure Requirements for the 2008 Ozone NAAQS.	Statewide	12/27/12	10/16/14 *[Insert* **Federal Register** *citation*].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0969; FRL–9917–62–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Infrastructure SIP Requirements for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of a state implementation plan (SIP) submission from Ohio regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standards (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. The proposed rulemaking associated with today's final action was published on July 25, 2014, and EPA received one comment pertaining to infrastructure for the 2008 ozone NAAQS during the comment period, which ended on August 25, 2014. The 2008 lead (Pb), and 2010 Nitrogen Dioxide (NO_2), and 2010 Sulfur Dioxide (SO_2) infrastructure SIPs were also addressed in the proposed rulemaking but will be addressed in a separate final rulemaking.

DATES: This final rule is effective on November 17, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0969. All documents in the docket are listed in the *www.regulations.gov* index. 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, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. 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. We recommend that you telephone Sarah Arra at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, 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) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of these SIP submissions?

A. What does this rulemaking address?

This rulemaking addresses submissions from the Ohio Environmental Protection Agency. The state submitted the infrastructure SIP for the 2008 ozone NAAQS on December 27, 2012, supplemented on June 7, 2013.

B. Why did the state make this SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 ozone NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA has highlighted this statutory requirement in multiple guidance documents, including the most recent guidance document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' issued on September 13, 2013.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submission from Ohio that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the

visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

A detailed rationale, history, and interpretation related to infrastructure SIP requirements can be found in our May 13, 2014 proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242–27245).

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (''SSM'') at sources, that may be contrary to the CAA and EPA's policies ''SSM''; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (collectively referred to as ''director's discretion''); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these substantive areas in separate rulemaking.

In addition, EPA is not acting on section 110(a)(2)(D)(i)—Interstate transport, section 110(a)(2)(J)—visibility protection, and portions of Ohio's submission addressing the prevention of significant deterioration, sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and the prevention of significant deterioration (PSD) portion of (J) for 2008 ozone NAAQS. EPA is also not acting on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. The rationale for not acting on elements of these requirements was included in EPA's July 25, 2014 proposed rulemaking.

II. What is our response to comments received on the proposed rulemaking?

The public comment period for EPA's proposed actions with respect to Ohio's satisfaction of the infrastructure SIP requirements for the 2008 ozone NAAQS closed on August 25, 2014. EPA received one comment letter related to the 2008 ozone NAAQS, and a synopsis of the adverse comments contained in this letter, as well as EPA's response, are provided below.

Comment: The State of Connecticut asserts that Connecticut's ability to attain the 2008 ozone NAAQS is substantially compromised by interstate transport of pollution from upwind states. Specifically, Cross-State Air Pollution Rule (CSAPR) modeling shows emissions from Ohio contributing to the nonattainment problem in Connecticut. The State of Connecticut asserts it has done its share to reduce in-state emissions, and EPA should ensure that each upwind state addresses contribution to another downwind state's nonattainment. Connecticut states that CAA section 110(a)(1) requires states like Ohio to submit, within three years of promulgation of a new NAAQS, a plan which provides for implementation, maintenance, and enforcement of such NAAQS within the state. Connecticut characterizes Ohio's 2008 ozone submission for the good neighbor element of Ohio's SIP as relying on state regulations which implement the Clean Air Interstate Rule and CSAPR, and that such programs were intended by EPA to address the 1997 ozone NAAQS and not the more stringent 2008 standard. Connecticut asserts EPA should therefore disapprove the Ohio submission. Connecticut also argues that, under section 110(a)(2), Ohio was required to submit a complete SIP that demonstrated compliance with the good neighbor provision of section 110(a)(2)(D)(i)(I). Connecticut further argues that the CAA does not give EPA discretion to take no action on the submitted good neighbor provisions on the grounds of taking a separate action. Instead, it asserts that the only action available to EPA is to determine the approvability of the good neighbor provision of Ohio's 2008 ozone NAAQS infrastructure SIP submission, or promulgate a FIP under section 110(c)(1) within two years.

Response: As explained in the notice of proposed rulemaking (NPR), this action does not address, for the 2008 ozone NAAQS, the good neighbor provision in section 110(a)(2)(D)(i)(I), which prohibits emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. Thus, to the extent the comment relates to the substance or approvability of the good neighbor provision in Ohio's 2008 ozone infrastructure SIP submission, the comment is not relevant to the present rulemaking. As stated herein and in the NPR, EPA will take later, separate action to address section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

EPA disagrees with the commenters' argument that EPA cannot approve a SIP without the good neighbor provision. Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve the states' SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. See S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1987)).

The Agency interprets its authority under section 110(k)(3) as affording EPA the discretion to approve or conditionally approve individual elements of Ohio's infrastructure submission for the 2008 ozone NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) with respect to that NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements, and interprets section 110(k)(3) as allowing EPA to act on individual severable measures in a plan submission. In short, EPA has discretion under section 110(k) to act upon the various individual elements of the state's infrastructure SIP submission, separately or together, as appropriate. The commenters raise no compelling legal or environmental rationale for an alternate interpretation.

EPA notes, however, that it is working with state partners to assess next steps to address air pollution that crosses state boundaries and will later take a separate action to address section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. EPA's approval of the Ohio infrastructure SIP submission for the 2008 ozone NAAQS for the portions described in the NPR was therefore appropriate.

III. What action is EPA taking?

The proposed rulemaking associated with today's final action was published on July 25, 2014 (79 FR 43338). The 2008 Pb, 2010 NO_2, and 2010 SO_2 infrastructure SIPs were also addressed in the proposed rulemaking but will be addressed in a separate final rulemaking.

For the reasons discussed in our proposed rulemaking and in the above

response to public comment, EPA is taking final action to approve, as proposed, Ohio's infrastructure SIP for the 2008 ozone NAAQS. Our final actions by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Ozone
(A): Emission limits and other control measures.	A
(B): Ambient air quality monitoring and data system.	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD program for Pb	NA
(C)3: NO_X as a precursor to ozone for PSD.	NA
(C)4: $PM_{2.5}$ Precursors/$PM_{2.5}$ and PM_{10} condensables for PSD.	NA
(C)5: $PM_{2.5}$ Increments	NA
(C)5: GHG permitting thresholds in PSD regulations.	NA
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS.	NA
(D)2: PSD	NA
(D)3: Visibility Protection	NA
(D)4: Interstate Pollution Abatement	A
(D)5: International Pollution Abatement.	A
(E): Adequate resources	A
(E): State boards	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.	NA
(J)1: Consultation with government officials.	A
(J)2: Public notification	A
(J)3: PSD	NA
(J)4: Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities.	A

In the above table, the key is as follows:
A—Approve.
NA—No Action/Separate Rulemaking.
+—Not germane to infrastructure SIPs.

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 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).

This rule 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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 December 15, 2014. 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, ozone, Reporting and recordkeeping requirements.

Dated: September 30, 2014.

Susan Hedman,

Regional Administrator, Region 5.

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. Section 52.1891 is amended by adding paragraph (g) to read as follows:

§ 52.1891 Section 110(a)(2) infrastructure requirements.

* * * * *

(g) Approval— In a December 27, 2012, submittal, supplemented on June 7, 2013, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 Ozone NAAQS. We are not finalizing action on section 110(a)(2)(D)(i)—Interstate transport, the visibility portions of section 110(a)(2)(J), and submissions addressing the prevention of significant deterioration requirements (PSD) in sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and the PSD portion of (J).

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