ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52
[40 CFR Parts 52, 81-Region 3]
Air Plan Approval; Pennsylvania; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the York-Adams 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 York-Adams 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 25, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2020–0319; FRL–10023–71–Region 3. 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-Inclee, 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-Inclee can also be reached via electronic mail at pagan-inclee.keila@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 9, 2021 (86 FR 8736), EPA published a notice of proposed rulemaking (NPRM). In the NPRM, EPA proposed approval of Pennsylvania's plan for maintaining the 1997 ozone NAAQS in the York-Adams Area through February 13, 2028, 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 January 14, 2008 (73 FR 2163, effective February 13, 2008), EPA approved a redesignation request (and maintenance plan) from PADEP for the York-Adams 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, 1 the D.C. Circuit held that this requirement cannot be waived because Pennsylvania identifies no 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 ineffective because they allegedly will not be evaluated and determined until after an exceedance of the NAAQS has occurred.

III. EPA's Response to Comments Received

EPA received one comment on the February 9, 2021 NPRM and a summary of the comment and EPA’s response is provided herein. The comment received is 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 ineffective because they allegedly will not be evaluated and determined until after an exceedance of the NAAQS has occurred.

1 See “Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas.”
2 Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas from Joseph Paisie, OAQPS, dated October 6, 1995; and “Limited Maintenance Plan Option for Moderate PM2.5 Nonattainment Areas” from Lydia Wegman, OAQPS, dated August 9, 2001.

3 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.
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.

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 the CAA, with substantially different wording and requirements, it is possible that the commenter has interpreted the term “evaluated” and “determined” to mean something like the specific measures identified by PADEP.

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 flash;” 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 guidance 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 the LMP in Pennsylvania. The court ruled 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.

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.”

Response: The attainment plan contingency measures are designed to prevent a violation of the NAAQS.

IV. Final Action

EPA is approving the 1997 ozone NAAQS maintenance plan for the York-Adams 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. 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 43255, 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 (65 FR 67249, August 10, 1997).

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 York-Adams 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

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 an entry for “1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the York-Adams Area” at the end of the table to read as follows:

§ 52.2020 Identification of plan.

Identify the plan by its name and the geographic area for which it is applicable.

<table>
<thead>
<tr>
<th>Name of non-regulatory SIP revision</th>
<th>Applicable geographic area</th>
<th>State submittal date</th>
<th>EPA approval date</th>
<th>Additional explanation</th>
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141


 Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action announces the EPA approval of alternative testing methods for use in measuring the levels of contaminants in drinking water to determine compliance with national primary drinking water regulations. The Safe Drinking Water Act authorizes EPA to approve the use of alternative testing methods through publication in the Federal Register. EPA is using this streamlined authority to make 17 additional methods available for analyzing drinking water samples. This expedited approach provides public water systems, laboratories, and primacy agencies with more timely access to new measurement techniques and greater flexibility in the selection of analytical methods, thereby reducing