

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
* Section 110(a)(2) Infrastructure Requirements for the 1997 PM <sub>2.5</sub> NAAQS.	* State-wide .....	* 9/15/2008; 6/28/2010 .....	* 7/14/2014 [Insert page number where the document begins].	* This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2006 PM <sub>2.5</sub> NAAQS.	State-wide .....	6/28/2010; 8/10/2011 .....	7/14/2014 [Insert page number where the document begins].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	State-wide .....	6/28/2010 .....	7/14/2014 [Insert page number where the document begins].	This action addresses the following CAA elements or portions thereof: 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-R03-OAR-2013-0649; FRL-9913-41-Region-3]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards**

**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 State of Maryland pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The State of

Maryland has made a submittal addressing the infrastructure requirements for the 2010 nitrogen dioxide (NO<sub>2</sub>) NAAQS.

**DATES:** This final rule is effective on August 13, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2013-0649. 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. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Ruth Knapp, (215) 814-2191, or by email at [knapp.ruth@epa.gov](mailto:knapp.ruth@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On February 9, 2010 (75 FR 6474), EPA established a new 1-hour primary NAAQS for NO<sub>2</sub> at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS. Specifically, section 110(a)(1) requires states to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe, and section 110(a)(2) requires states to address specific elements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS.

The contents of a SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's SIP at the time in which the state develops and submits the submission for a new or revised NAAQS. States were required to submit such SIPs for the 2010 NO<sub>2</sub> NAAQS to EPA no later than January 2013.

**II. Summary of SIP Revision**

On April 15, 2014 (79 FR 21173), EPA published a notice of proposed rulemaking (NPR) for the State of

Maryland proposing approval of Maryland's August 14, 2013 submittal to satisfy several requirements of section 110(a)(2) of the CAA for the 2010 NO<sub>2</sub> NAAQS. In the NPR, EPA proposed approval of the following infrastructure elements: Sections 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. This action does not include any action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process if necessary. The rationale which supports EPA's proposed action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available online at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2013-0649.

### III. Final Action

EPA is approving as a revision to the Maryland SIP the following infrastructure elements in Maryland's August 14, 2013 submittal for the 2010 NO<sub>2</sub> NAAQS: Sections 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). This rulemaking action does not include section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the three year submission deadline of section 110(a)(1), and will be addressed in a separate process.

### IV. 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 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).

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 September 12, 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, addressing infrastructure requirements of section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA for the 2010 NO<sub>2</sub> NAAQS for the State of Maryland, 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, Reporting and recordkeeping requirements.

Dated: June 25, 2014.

W.C. Early,

Acting Regional Administrator, Region III.

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.*

#### Subpart V—Maryland

- 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for "Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide NAAQS" at the end of the table to read as follows:

#### § 52.1070 Identification of plan.

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

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide NAAQS.	Statewide.	8/14/2013	7/14/2014 [Insert <b>Federal Register</b> citation].	This action addresses the following CAA elements: 110(a)(2) (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R06-OAR-2013-0542; FRL-9913-48-Region-6]

**Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review State Implementation Plan; Flexible Permit Program**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is conditionally approving revisions to the Texas New Source Review (NSR) State Implementation Plan (SIP) to establish the Texas Minor NSR Flexible Permits Program, submitted by the Texas Commission on Environmental Quality (TCEQ). The conditional approval is predicated on a commitment from TCEQ in a letter dated December 9, 2013, to adopt certain minor clarifications to the Flexible Permit Program by November 30, 2014. The EPA is finalizing this action under section 110 of the Clean Air Act (CAA).

**DATES:** This final rule is effective August 13, 2014.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2013-0542. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available. E.g., Confidential Business Information or other information the disclosure of which is restricted by the 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 <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445

Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stephanie Kordzi, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-7520; email address [kordzi.stephanie@epa.gov](mailto:kordzi.stephanie@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

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**I. Background for This Final Action**

On September 23, 2009, the EPA proposed to disapprove revisions to the SIP submitted by the State of Texas that established the Flexible Permit Program. 74 FR 48480. On July 15, 2010, the EPA took final action by disapproving Texas’ Flexible Permit Program. 75 FR 41312.

For a detailed discussion of our rationale for the disapproval see 75 FR 41312 (July 15, 2010). Upon finalization of the rule several parties appealed the decision to the Fifth Circuit Court of Appeals. In July and August of 2010 the State of Texas, Texas Oil & Gas Association (TXOGA), Texas Association of Manufacturers, and Business Coalition for Clean Air (BCCA) Appeal Group all filed petitions with the Fifth Circuit Court of Appeals seeking to overturn the EPA’s disapproval of the Flexible Permit Program. During the same time period, the Environmental Defense Fund (EDF) and Environmental Integrity Project

(EIP) moved for leave to intervene in support of the EPA’s disapproval. Their request to intervene was granted by the Court. While the challenge was pending, the state adopted a modified flexible permits regulation, but did not submit it to the EPA.

On August 13, 2012, the Fifth Circuit Court of Appeals granted the petitioner’s review, vacated our disapproval of the Texas Flexible Permit Program and remanded the matter back to the EPA for further review. After the Court remanded the Flexible Permit Rule to the EPA, the State, in a letter dated September 12, 2012, requested that we take action on the original Flexible Permit Program submittal package in accordance with the ruling of the Fifth Circuit Court of Appeals. Following discussions with the EPA, on September 24, 2013, Texas formally adopted and approved this SIP revision which is comprised of the original submittal that the EPA took its disapproval action on as well as rule additions agreed upon between the TCEQ and the EPA that the EPA finds are essential to the program’s approvability.

On October 21, 2013, Texas formally submitted to the EPA this final revision to the SIP. The TCEQ also identified in the Flexible Permits Program SIP submittal cover letter, several sections of previous SIP submittals that are withdrawn from the EPA’s consideration as revisions to the Texas SIP. Accordingly, the EPA recognizes the following sections as withdrawn by the State and no longer before us for review or action:

- 30 TAC Section 116.711(3) (last sentence only) and (11), as amended August 21, 2002, and all earlier versions withdrawn October 21, 2013.
- Adopted revisions submitted October 21, 2013. 30 TAC Section 116.715(a), only with regard to the text “or Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA Section 112(g), 40 CFR Part 63))”, as amended August 21, 2002, and all earlier versions withdrawn on October 21, 2013.