

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

[EPA-R05-OAR-2015-0699; FRL-9989-48-Region 5]

**Air Plan Approval; Ohio; Attainment Plan for the Lake County SO<sub>2</sub> Nonattainment Area****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), Ohio's plan for attaining the 1-hour sulfur dioxide (SO<sub>2</sub>) primary national ambient air quality standard (NAAQS) in the Lake County SO<sub>2</sub> nonattainment area. EPA proposed to approve Ohio's Lake County plan as a revision to Ohio's SO<sub>2</sub> State Implementation Plan (SIP) on August 21, 2018. EPA received public comments on the proposed rulemaking and is providing responses to the comments below.

**DATES:** This final rule is effective on March 18, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2015-0699. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, 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 through [www.regulations.gov](http://www.regulations.gov) or at the 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 Mary Portanova, Environmental Engineer, at (312) 353-5954 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever

“we,” “us,” or “our” is used, we mean EPA. Ohio's nonattainment SIP submittal of April 3, 2015, supplemented on October 13, 2015 and on March 13, 2017, addressed Ohio's Lake County, Muskingum River, and Steubenville OH-WV SO<sub>2</sub> nonattainment areas. This final action addresses only the Lake County portion of Ohio's nonattainment SIP submittal. The Muskingum River and Steubenville portions of Ohio's submittal will be addressed in future action.

This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. Background
- II. Public Comments and EPA Responses
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

**I. Background**

Lake County, Ohio, was designated nonattainment for the 2010 1-hour primary SO<sub>2</sub> NAAQS on August 5, 2013 (78 FR 47191). As required by the CAA, Ohio developed a plan to provide for attainment of the SO<sub>2</sub> NAAQS in Lake County. Ohio submitted its plan to EPA on April 3, 2015 and supplemented it on October 13, 2015, and on March 13, 2017. On August 21, 2018 (83 FR 42235), EPA proposed to find that Ohio appropriately demonstrated that its plan will provide for attainment of the SO<sub>2</sub> NAAQS in Lake County by the applicable attainment date and that the plan meets the other applicable requirements of the CAA.

**II. Public Comments and EPA Responses**

The comment period on EPA's August 21, 2018 notice of proposed rulemaking (NPRM) closed on September 20, 2018. EPA received one adverse public comment from the Sierra Club and one public comment which was not relevant to the proposed action. The adverse comment and EPA's response are described below. In the following discussion, EPA will refer to the Sierra Club as “the commenter.” “The Painesville plant” refers to the Painesville Municipal Electric Plant in Lake County. The “April 2014 guidance” refers to EPA's April 23, 2014 recommended guidance for meeting the statutory requirements in SO<sub>2</sub> nonattainment area SIPs, entitled, “Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions,” available at [https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance\\_nonattainment\\_sip.pdf](https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf).

*Comment:* The commenter stated that short-term exposure to SO<sub>2</sub> for as little as five minutes has significant health

impacts, and that EPA changed the SO<sub>2</sub> NAAQS to a shorter-term form to address these health impacts. The commenter said that emission limits with an averaging period longer than one hour are highly unlikely to be able to protect the 1-hour NAAQS. The commenter said that EPA cannot rely on a 30-day emission limit for the Painesville plant to assure compliance with a 1-hour air quality standard. The commenter believes that EPA should not approve Ohio's nonattainment plan until Ohio develops a 1-hour emission limit for the Painesville plant that protects public health.

*EPA Response:* The health effects information provided by the commenter, which was addressed in EPA's promulgation of the 2010 SO<sub>2</sub> NAAQS, is not in dispute in this rulemaking. This rulemaking instead addresses whether Ohio's plan is adequate to meet the NAAQS.

EPA disagrees with the commenter's statement that emission limits with an averaging period longer than one hour are highly unlikely to be able to protect the 1-hour NAAQS. EPA believes as a general matter that properly set longer term average limits are comparably effective in providing for attainment of the 1-hour SO<sub>2</sub> standard as 1-hour limits. EPA provided a more complete rationale for this belief in the August 21, 2018 NPRM for the Lake County SO<sub>2</sub> SIP, including a summary of analyses described in EPA's guidance that support a conclusion that the distribution of emissions that can be expected in compliance with a properly set longer term average limit is likely to yield better overall air quality than constant hourly emissions set at a level that provides for attainment. EPA found that a longer term average limit which is comparably stringent to a short-term average limit is likely to yield comparable air quality; and that the net effect of allowing emissions variability over time but requiring a lower average emission level is that the resulting worst-case air quality is likely to be comparable to or better than the worst-case air quality resulting from the corresponding higher emission limit without variability.

It is useful here to distinguish between exceedances and violations. The term “exceedance,” or “exceedance of the level of the NAAQS,” is used to mean a single occasion on which the ambient SO<sub>2</sub> concentration exceeds 75 parts per billion (ppb). The term “violation,” in contrast, means that a sufficient number and magnitude of exceedances has occurred to violate the NAAQS, *i.e.*, that the 3-year average of the 99th percentile daily maximum 1-

hour SO<sub>2</sub> concentrations is above 75 ppb.

Any accounting of whether a 30-day average limit provides for attainment must consider factors that reduce the likelihood of exceedances of the NAAQS level as well as factors that create risk of additional exceedances. To facilitate this analysis, EPA used the concept of a critical emission value (CEV) for the SO<sub>2</sub>-emitting facilities which are being addressed in a nonattainment SIP. The CEV is the continuous 1-hour emission rate which is expected to provide for the average annual 99th percentile maximum daily 1-hour concentration to be at or below 75 ppb, which in a typical year means that fewer than four days have maximum hourly ambient SO<sub>2</sub> concentrations exceeding 75 ppb.

EPA recognizes that a 30-day limit can allow occasions in which emissions exceed the CEV, and such occasions yield the possibility of exceedances of the NAAQS level occurring that would not be expected if emissions were always at the CEV. At the same time, the establishment of the 30-day limit below the CEV means that emissions must routinely be lower than they would be required to be with a 1-hour emission limit at the CEV. On those critical modeled days in which emissions at the CEV are expected to result in concentrations exceeding 75 ppb, emissions below the CEV may well result in concentrations below 75 ppb.

Requiring emissions on average to be below the CEV introduces significant chances that emissions will be below the CEV on critical days, so that such a requirement creates significant chances that air quality would be better than 75 ppb on days that, with emissions at the CEV, would have exceeded 75 ppb.

The August 21, 2018 NPRM provides an illustrative example of the effect that application of a limit with an averaging time longer than 1 hour can have on air quality. This example illustrates both: (1) The possibility of elevated emissions (emissions above the CEV) causing exceedances of the NAAQS level not expected with emissions at or below the CEV and (2) the possibility that the requirement for routinely lower emissions would result in avoiding exceedances of the NAAQS level that would be expected with emissions at the CEV. In this example, moving from a 1-hour limit to a 30-day average limit results in one day that exceeds 75 ppb that would otherwise be below 75 ppb, one day that is below 75 ppb that would otherwise be above 75 ppb, and one day that is below 75 ppb that would otherwise be at 75 ppb. In net, the 99th percentile of the 30-day average limit

scenario is lower than that of the 1-hour limit scenario, with a design value of 67.5 ppb rather than 75 ppb. Stated more generally, this example illustrates several points: (1) The variations in emissions that are accounted for with a longer term average limit can yield higher concentrations on some days and lower concentrations on other days, as determined by the factors influencing dispersion on each day, (2) one must account for both possibilities, and (3) accounting for both effects can yield the conclusion that a properly set longer term average limit can provide as good or better air quality than allowing constant emissions at a higher level.

The commenter does not address EPA's full rationale for concluding that properly set 30-day average limits are a suitable basis for providing for attainment of the 1-hour SO<sub>2</sub> standard. Instead, the commenter merely notes the possibility that air quality could be worse with a 30-day average limit than with a 1-hour limit because the longer-term limit appears to allow emissions to exceed the level of an acceptable 1-hour limit. The commenter makes no acknowledgement of the possibility that a properly adjusted 30-day average limit can avoid some exceedances of the NAAQS level that would be expected to occur with emissions allowed always to be at the CEV. Consequently, the commenter does not acknowledge or address the occasions in which the longer-term limit requires better air quality, which is a key element of EPA's rationale for concluding that the net effect of limiting longer term average emissions to a downward adjusted level can be comparably effective in providing for attainment as limiting 1-hour emissions to the level of the CEV.

EPA does not agree that in all cases it must disapprove plans which use longer-term limits, and instead require 1-hour emission limits. After reviewing Ohio's submittal, EPA finds that the limits established for the Painesville plant provide a suitable alternative to establishing 1-hour average emission limits for this source. Ohio's limits for the Painesville plant were developed in accordance with EPA's April 2014 guidance, with an appropriate downward adjustment from the CEV found in Ohio's modeling analysis. EPA is satisfied that the Painesville plant's 30-day emission limits are therefore comparable in stringency to the 1-hour CEV. The Painesville plant's boilers are also subject to a requirement for a reduction in coal sulfur content, a separate 24-hour cap on their total operating rate, and an additional restriction to ten percent of their annual

capacity in accordance with the Limited Use definition in the Boiler MACT<sup>1</sup> rule.

In addition, the 2015 closure of the FirstEnergy Generation, LLC, Eastlake Plant has provided additional SO<sub>2</sub> emission reductions which were not credited in the Lake County modeling analysis. These reductions help supplement the effectiveness of Ohio's planned reductions at the Painesville plant to bring Lake County into attainment of the 2010 SO<sub>2</sub> NAAQS and maintain the standards in future.

EPA believes that Ohio's Lake County nonattainment plan as a whole is sufficient to protect and maintain the 2010 SO<sub>2</sub> NAAQS.

*Comment:* The commenter asserts that the limits are "not comparable in stringency to the hourly emission rates modeled by Ohio in its attainment demonstration."

*EPA Response:* The commenter does not dispute EPA's rationale for concluding that Ohio's 30-day average limits for the Painesville plant are comparably stringent to 1-hour limits at the level Ohio modeled, nor does the commenter provide a basis for its assertion that Ohio's limits are not comparably stringent. EPA's guidance provides a recommended approach for determining the ratio between 30-day average levels and 1-hour levels, determined at the 99th percentile level, which yields an adjustment factor that seeks to quantify the effect of using the longer averaging time on the stringency of the limit and thus presumptively expresses the degree of adjustment to be applied to a 1-hour emission limit to determine a comparably stringent 30-day average limit.

EPA concurred with Ohio's decision to apply the national average of such adjustment factors, as given in Appendix D of EPA's April 2014 guidance. In absence of a rationale for changing its views, EPA continues to believe that the 30-day average limits adopted by Ohio are comparably stringent to 1-hour limits at the level Ohio modeled.

*Comment:* The commenter said that air quality conditions can be rendered unsafe by as few as four hours of elevated emissions over the course of the year, making an emission limit with an averaging period of longer than one hour unlikely to be able to protect this short-term standard. The commenter argued that spikes in emissions from the Painesville plant could cause short-term

<sup>1</sup> Information about the boiler MACT is available at <https://www.epa.gov/stationary-sources-air-pollution/industrial-commercial-and-institutional-boilers-and-process-heaters>.

elevations in ambient SO<sub>2</sub> levels sufficient to violate the NAAQS while nonetheless averaging out over longer periods such that the 30-day average permit limit is “complied” with.

*EPA Response:* Again, proper accounting of the air quality consequences of applying a 30-day average limit cannot be limited to consideration of the possibility of additional exceedances of 75 ppb on days with emissions above the CEV; one must additionally consider the likelihood of effects in the other direction, *i.e.*, that requiring lower emissions on average (and on most occasions) might result in avoiding exceedances of the NAAQS level that would occur with emissions at the CEV. As discussed above, the NPRM provides an example that illustrates this principle.

In addition, for several reasons, EPA disagrees with the commenter's implication that any short-term occasion of elevated emissions (*e.g.*, emissions above the CEV) creates an unacceptable risk of additional exceedances of the NAAQS level that would result in actual violation of the standard. First, the occurrence of an hour with emissions above the CEV is unlikely on its own to lead to a concentration above the level of the NAAQS. The CEV is identified as an emission level which will protect against NAAQS violations, considering the full range of local meteorological conditions. The analyses which identify the CEV show that ambient air concentrations would be well below exceedance levels in much of the modeling domain, and for most hours. Episodes of elevated emissions cause significantly elevated concentrations only on a limited number of days per year when meteorological conditions favor high concentrations. As a result, any single episode of elevated emissions cannot be assumed to cause an exceedance of 75 ppb, and in fact the risk of such an event, while nonzero, is quite low. Furthermore, even if multiple occurrences of elevated emissions do occur at times with meteorology conducive to high concentrations, these occasions are likely to involve different wind directions, resulting in the elevated concentrations occurring at different locations. Therefore, from the perspective that air quality is evaluated at individual locations, and a violation occurs only if any single location observes an excessive net number of exceedances, it is especially unlikely that isolated occurrences of elevated emissions (particularly in a scenario with emissions on most occasions being well below the CEV) would result in violations at any location.

Second, EPA disagrees with the apparent view that any risk of an event in which elevated emissions causes otherwise unexpected exceedances of 75 ppb is an unacceptable risk. While use of a limit based on a long-term average increases the risk of elevated concentrations on a small number of days, the establishment of the limit at a reduced level means that most days will have a reduced risk of elevated concentrations. Since the pertinent question is whether Ohio's plan provides for attainment, EPA must address the net effect of applying a long-term average, not just considering those factors that increase the likelihood of exceedances of 75 ppb or just considering those factors that reduce the likelihood of such exceedances.

Examining the net probabilities of elevated emissions occurring simultaneously with meteorology conducive to exceedances, and of reduced emissions occurring on occasions that would have experienced exceedances of the standard without that emission reduction, suggests that the net effects cannot be assessed without a complicated analysis. A more useful framework for considering these questions is to focus, for any particular location, on those hours where the meteorology is conducive to having high concentrations at that location. Consider, for example, the likely magnitude of emissions during the pertinent hours for a source that is complying with a long-term limit that reflects a 30 percent downward adjustment. During the pertinent hours, the source is quite unlikely to be emitting more than the CEV (a probability on the order of 1 percent) and is much more likely to be emitting at or below 30 percent below the CEV. This perspective better frames the question of the net effect of having variable emissions occasionally exceeding the CEV but requiring emissions to average well below the CEV as compared to allowing emissions always to be at the CEV.

EPA believes that if emissions at critical times are suitably unlikely to exceed the CEV and are suitably likely to be well below the CEV, the net effect is to provide adequately for attainment. As discussed in the NPRM, EPA has conducted analyses to evaluate the extent to which longer-term average limits with comparable stringency to 1-hour limits at the critical emission value can provide for attainment. EPA finds that a comparably stringent limit provides a sufficient constraint on the frequency and magnitude of occurrences of elevated emissions such that this

control strategy will reasonably provide for attainment.

As stated in appendix B of EPA's April 2014 guidance, the Agency acknowledges that even with an adjustment to provide comparable stringency, a source complying with a longer-term average emission limit could possibly have hourly emissions which occasionally exceed the critical emission value. In order to assure that SO<sub>2</sub> emission sources will maintain the NAAQS while using longer-term average limits, EPA's guidance recommends that 30-day average SO<sub>2</sub> limits be set at a level below the level that would be expected to be protective of the SO<sub>2</sub> NAAQS as a 1-hour SO<sub>2</sub> limit. A facility in compliance with the 30-day limit could therefore have occasional spikes of higher concentration, but the majority of its hourly impacts must be as low as or lower than those of a source which is limited at the critical emission value level. As was stated in the NPRM, EPA's statistical analyses of SO<sub>2</sub> emissions data showed that a comparably stringent 30-day average limit is likely to result in fewer exceedances and better air quality than would occur with 1-hour emissions at the critical emission value.

*Comment:* The commenter said that past EPA SO<sub>2</sub> policy (1994) definitively stated that “EPA will not approve an SO<sub>2</sub> SIP with emission limitations based on 30-day average, unless the SIP also contains short-term limits established by an approved dispersion modeling analysis.” The commenter also cited past actions, including a 1986 memorandum regarding a specific proposed facility, in which EPA determined that compliance with a 30-day rolling average emission limit under NSPS Subpart Da does not adequately demonstrate compliance with short-term NAAQS and PSD increments, regardless of sulfur variability.

*EPA Response:* In this action, EPA is not changing its position regarding the 1-hour emissions limitations to which other facilities, as cited by the commenter, are subject. However, the examples that the commenter cites predate the release of EPA's April 2014 guidance. They reflect EPA's policy for implementing the NAAQS before EPA addressed the question of whether it might be possible to devise an effective attainment plan using an emission limit with an averaging period longer than that of the NAAQS, given appropriate adjustments to make the limit comparably stringent to a short-term emission rate that would ensure attainment of the SO<sub>2</sub> NAAQS. EPA developed the April 2014 guidance after a lengthy stakeholder outreach process

regarding implementation strategies for the 2010 SO<sub>2</sub> NAAQS. As the April 2014 guidance was the first instance in which the Agency provided direct guidance for considering adjusted long-term average limits for a short-term standard, EPA does not consider the earlier documents to countermand the April 2014 guidance on this issue.

EPA's April 2014 guidance acknowledges that EPA had previously recommended that averaging times in SIP emission limits should not exceed the averaging time of the applicable NAAQS. However, the April 2014 guidance expresses EPA's finding that control strategies involving limits with averaging times of up to 30 days can provide for attainment of the 2010 SO<sub>2</sub> NAAQS, where the limits have been set at levels expected to be comparably stringent to shorter-term limits. As stated in the August 21, 2018 NPRM, EPA considered Ohio's control strategy for the Painesville plant and found that the limits in Ohio Administrative Code Chapter 3745-18 (OAC 3745-18) met EPA's guidelines for acceptable emission limits based on a 30-day averaging time.

*Comment:* The commenter stated that a 30-day averaging time is the same as a 720-hour averaging period rolling on a daily basis, and "it seems impossible to derive a 720-hour average limit that would ensure hourly emissions of SO<sub>2</sub> are limited to the extent necessary to protect the 1-hour average SO<sub>2</sub> NAAQS, unless it was shown through air dispersion modeling that the maximum uncontrolled hourly emissions from a source would not exceed the NAAQS."

*EPA Response:* The compliance calculations for the limits applicable to the Painesville plant units would be 720-hour averages when the unit operates in each of those 720 hours. Hours in which the unit is not operating are not included in the calculation, to focus the compliance test on how well the facility's emissions are controlled during operational hours.

EPA's April 2014 guidance provides the results of analyses which demonstrate that limits based on periods of as long as 30 days (720 hours) can, in many cases, be reasonably considered to provide for attainment of the 2010 SO<sub>2</sub> NAAQS. When a 30-day emission limit is set sufficiently lower than the 1-hour emission limit which the modeling analysis indicated would conservatively provide for attainment, the numerically lower 30-day limit would also be expected to provide for attainment. In accordance with EPA guidance, Ohio conducted modeling to determine the CEV, *i.e.*, the emission rate that, if emitted continuously, would

result in attainment. Ohio then established 30-day average limits that are comparably stringent to the 1-hour limits it otherwise would have established. EPA agrees with Ohio that these limits can be expected to provide comparable air quality as the corresponding 1-hour limits would, and EPA considers the 30-day average limits to satisfy the requirement to provide for attainment.

EPA does not agree with the commenter that the application of a longer term average limit requires determining the unit's maximum uncontrolled emission rate or a maximum 1-hour emission rate that might occur in compliance with a longer term average emission limit, or that modeling must be conducted to show that such emission rates do not cause NAAQS violations. The analysis that the commenter proposes would not take proper account of the impact of variable emissions within the longer-term limit. In particular, while such an analysis would assess potential additional exceedances of the NAAQS level on occasions with elevated emissions, such an analysis would fail to reflect the improved air quality on days with lower emissions. Since compliance with a downward adjusted long term average limit necessarily requires any occasions of elevated emissions to be accompanied by occasions of lower than average emissions, the commenter's proposed analysis is inadequate for assessing the net effects of emissions sometimes being higher but more often being lower than the CEV.

*Comment:* The commenter states that Ohio's approach is inconsistent with EPA's Guideline on Air Quality Models, which in Table 8-1 "requires modeling for short term (<= 24 hours) NAAQS be based on the allowable emissions over the averaging time of the NAAQS. Yet, the maximum allowable hourly emission rate is difficult to predict from a 30-day average limit for an emissions unit."

*EPA Response:* EPA's 2014 guidance for SO<sub>2</sub> SIPs directly addresses the comment regarding Table 8-1. Page A-79 of the guidance states:

An important caveat regarding Table 8-1 of Appendix W is that this guidance is oriented toward short term emission limits (*e.g.*, 1-hour emission limits), as recommended in previous guidance. Current guidance, providing for use of longer term emission limits, provides that after the state determines the 1-hour limit that would be necessary to provide for attainment, any longer-term limit should be established at a level that is sufficiently lower to provide comparable stringency. Thus, in cases where a state wishes to apply a longer term average limit, the attainment analysis would be based

not on the level of the longer-term limit but rather on the level of the corresponding 1-hour emission limit that was shown in the plan to be of comparable stringency.

Accordingly, EPA believes that Ohio has provided an appropriate demonstration that its 30-day average limit, set to be comparably stringent to a 1-hour limit at the modeled CEV, will provide for attainment.

*Comment:* The commenter said that EPA's April 2014 guidance allows flexibility for sources that cannot meet the hourly rate of SO<sub>2</sub> emissions necessary to attain the NAAQS. The CAA requires the implementation of all reasonably available control measures to provide for attainment. The commenter said that it is reasonable for a source such as the Painesville plant to guard against spikes in sulfur content of fuel and/or SO<sub>2</sub> emissions through proper operation of scrubbers, limiting high sulfur coal, and testing for coal sulfur content. The commenter believes that the flexibility in EPA's guidance has allowed Ohio to propose 30-day average limits for the Painesville plant which fail Congress' direction that EPA shall provide for attainment of the NAAQS.

*EPA Response:* EPA believes it is important to recognize that some sources may have variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that stringent hourly limits are never exceeded. The Painesville plant is complying with the Federal Boiler MACT rule by taking enforceable limits on its operations to meet the definition of a Limited Use boiler, operating at 10% of its annual heat input capacity. As such, the plant will only operate intermittently, during periods of high demand or service interruptions. This type of operation reflects a decrease in overall emissions from this source.

The boiler MACT rule does not require that Limited Use boilers install additional control technology, because add-on SO<sub>2</sub> control systems require steady-state operations for good control efficiency and cannot reduce SO<sub>2</sub> emissions effectively for intermittent short-term operations. The Painesville plant's revised rules do require a reduction in allowable coal sulfur content, with coal sampling to confirm sulfur content. Ohio EPA has determined that the Painesville plant is unable to use very low sulfur (Powder River Basin) coal because of the high cost of updating its facilities to handle and use it for its limited operations; because the unique characteristics of the coal has a detrimental effect on the

facility's particulate matter controls; and because of the increased risk of fire during storage of the more volatile low-sulfur coal, which has occurred elsewhere in Ohio with similar coal storage and handling equipment.

EPA believes that the flexibility of the 30-day average limit is reasonable for an intermittently-operating facility such as the Painesville plant. As stated previously, EPA's analyses demonstrated that its requirement for a tighter limit to be used with a longer-term averaging period is likely to yield better air quality than is required with a comparably stringent 1-hour limit. EPA's April 2014 guidance states, "if periods of hourly emissions above the critical emission value are a rare occurrence at a source, these periods would be unlikely to have a significant impact on air quality, insofar as they would be very unlikely to occur repeatedly at the times when the meteorology is conducive for high ambient concentrations of SO<sub>2</sub>." The Painesville plant's limit, supplemented by an additional 24-hour boiler heat input cap and the stringent federally enforceable limitation on the plant's annual boiler usage, is expected to provide for attainment of the NAAQS in accordance with the CAA's requirements.

### III. What action is EPA taking?

EPA is approving Ohio's April 3, 2015 plan, as supplemented on October 13, 2015 and on March 13, 2017, for attaining the 2010 1-hour SO<sub>2</sub> NAAQS and for meeting other nonattainment area planning requirements for the Lake County SO<sub>2</sub> nonattainment area. EPA is amending the codification in 40 CFR 52.1870(e) to include the approval of Ohio's SO<sub>2</sub> attainment plan for Lake County.

In development of this plan, Ohio amended its rules at OAC 3745-18-49 (F) (establishing new limits for the Painesville plant), OAC 3745-18-03 (B)(9), OAC 3745-18-03 (C)(11), and OAC 3745-18-04(D)(10) (establishing a compliance date and other administrative provisions), and rescinding OAC 3745-18-49(G) (reflecting the enforceable shutdown of the Eastlake plant). These revisions became effective on February 16, 2017. EPA approved these revisions into the SIP, as codified at 40 CFR 52.1870(c), on October 11, 2018 (83 FR 51361), as part of action on a broader range of OAC Chapter 3745-18 revisions. Thus, no additional action is necessary to incorporate the pertinent limits into the

SIP, and this action is limited to concluding that Ohio has demonstrated that these previously approved limits provide for attainment of the SO<sub>2</sub> NAAQS in Lake County and that Ohio has met the other planning requirements for this area.

### 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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, 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 April 15, 2019. 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 29, 2019.

**Cathy Stepp,**

*Regional Administrator, Region 5.*

40 CFR part 52 is amended as follows:

Authority: 42 U.S.C. 7401 *et seq.*

§ 52.1870 Identification of plan.

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:

■ 2. In § 52.1870, the table in paragraph (e) is amended by adding an entry for “SO<sub>2</sub> (2010)” after the entry for “PM<sub>2.5</sub> (2012)” under the heading “Summary of Criteria Pollutant Attainment Plans” to read as follows:

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

**EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS**

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
* * * * *				
<b>Summary of Criteria Pollutant Attainment Plans</b>				
SO <sub>2</sub> (2010) .....	Lake County .....	2/16/2017	2/14/2019, [insert <b>Federal Register</b> citation].	EPA is approving the following plan elements: The emission inventory; the demonstration of attainment; and revised emission limits as meeting RACM requirements.
* * * * *				

[FR Doc. 2019-02210 Filed 2-13-19; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R04-OAR-2018-0531; FRL-9989-38-Region 4]

**Air Plan Approval; North Carolina; Ozone NAAQS Update**

**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 North Carolina through the North Carolina Division of Air Quality (NCDAQ) with a letter dated March 21, 2018. The SIP submittal includes changes to the State’s air quality rules for ozone to be consistent with the National Ambient Air Quality Standards (NAAQS). EPA is approving these provisions of the SIP revision because the State has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act) and federal regulations.

**DATES:** This rule is effective March 18, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2018-0531. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov)

website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information 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 Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9088. Ms. Bell can also be reached via electronic mail at [bell.tiereny@epa.gov](mailto:bell.tiereny@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS to protect public health and welfare. The CAA requires periodic review of the air quality criteria—the science upon which the standards are based—and the standards themselves. EPA’s regulatory provisions that govern the NAAQS are found at 40 CFR 50—*National Primary and Secondary Ambient Air Quality Standards*. In this rulemaking, EPA is approving revisions to the North Carolina air quality rules addressing Rule 15A NCAC 02D .0405, *Ozone*, in the North Carolina SIP.<sup>1</sup> EPA notes that the cover letter was dated March 21, 2018.<sup>2</sup> Under Subchapter 2D, Section .0405 is amended by updating air quality standards to reflect the most recent ozone NAAQS as well as making textual modifications in the following manner: Removing 0.075 parts per million (ppm) and replacing it with 0.070 ppm; deleting “8-hour” and replacing it with “eight-hour”; deleting the word “is” and replacing it with “shall be” and later “shall be deemed”; and deleting Appendix P, which referenced the 2008 Ozone Standard, and replacing it with Appendix U, which references the 2015 Ozone Standard. The SIP submission amending

<sup>1</sup> In the table of North Carolina regulations federally-approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as “Subchapter 2D Air Pollution Control Requirements.”

<sup>2</sup> The submittal was received on April 4, 2018.