



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2016-0359; FRL-9952-73-Region 4]

Air Plan Approval; TN; Revisions to the Knox County Portion of the TN SIP

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on January 11, 2016. The proposed revision was submitted by TDEC on behalf of the Knox County Department of Air Quality Management, which has jurisdiction over Knox County, Tennessee. The revision that EPA is proposing for approval amends the Knox County Air Quality Management Department's regulations, which are part of the Tennessee SIP, to address EPA's startup, shutdown, and malfunction (SSM) SIP call for Knox County. EPA is proposing approval of the January 11, 2016, SIP revision because the Agency has determined that it is in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2016-0359 at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, 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) 562-9644. Ms. Sanchez can also be reached via electronic mail at sanchez.madolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing today?

EPA is proposing to approve a revision to the Tennessee SIP at Knox County Regulation Section 32.0, “Use of Evidence.” The revision would remove the existing text of provision Section 32.1(C), which states: “A determination that there has been a violation of these regulations or orders issued pursuant thereto shall not be used in any lawsuit brought by any private citizen.” This text would be replaced with “(Reserved).” TDEC submitted the

January 11, 2016, SIP revision to address EPA’s final action entitled “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” 80 FR 33839 (June 12, 2015), hereafter referred to as the “SSM SIP Action.”

II. What is the background for EPA’s proposed action?

On June 30, 2011, the Sierra Club (the Petitioner) filed a petition for rulemaking with the EPA Administrator, asking EPA to take action on specific provisions in the SIPs of 39 states. The petition included interrelated requests concerning state rule treatment of excess emissions by sources during periods of SSM. Exemptions from emission limits during periods of SSM exist in a number of state rules, some of which were adopted and approved into SIPs by EPA many years ago. The petition alleged that SSM exemptions undermine the emission limits in SIPs and threaten states’ abilities to achieve and maintain compliance with national ambient air quality standards, thereby threatening public health and public welfare. The Petitioner requested that EPA either (i) notify the states of the substantial inadequacies in their SIPs and finalize a rule requiring them to revise their plans pursuant to CAA section 110(k)(5) (referred to as a “SIP call”), or (ii) determine that EPA’s action approving the implementation plan provisions was in error and revise those approvals so that the SIPs are brought into compliance with the requirements of the CAA pursuant to CAA section 110(k)(6).

On February 22, 2013 (78 FR 12459), EPA proposed an action that would either grant or deny the Sierra Club petition with respect to each of the SIP provisions alleged to be inconsistent with the CAA. That proposal summarizes EPA’s review of all of the provisions that were

identified in the petition, providing a detailed analysis of each provision and explaining how each one either does or does not comply with the CAA with regard to excess emission events. For each SIP provision that appeared to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5) of the CAA.

On May 22, 2015, the EPA Administrator signed the final SSM SIP Action. That action responds to the Sierra Club petition by granting it with respect to the provisions determined to be deficient and denying it with respect to the others. The final action responds to all public comments received on the proposed action and calls for 36 states to submit corrective SIP revisions by November 22, 2016, to bring specified provisions into compliance with the CAA. In addition, the final action reiterates EPA's interpretation of the CAA regarding excess emissions during SSM periods and clarifies EPA's longstanding SSM Policy as it applies to SIPs.

With regard to the Knox County portion of the Tennessee SIP, the Petitioner objected to Regulation 32.1(C), arguing that the provision prevents required reports of SSM conditions from being used as evidence in citizen suits, thereby undermining the express authorization of citizen enforcement actions under the CAA. After consideration of public comments on the SSM SIP proposal, EPA agreed that the Knox County rule is inconsistent with the fundamental requirements of CAA sections 113(e)(1), 114(c) and 304 and the credible evidence rule¹ for the reasons fully explained in Section IX.E.11 of the SSM SIP proposal. Therefore, EPA determined in its final SIP call action that Knox County Regulation 32.1(C) is substantially inadequate to

¹ 40 CFR 51.212(c); *see also* "Credible Evidence Revisions," 62 FR 8314 (Feb. 24, 1997).

meet CAA requirements and thus issued a SIP call requiring the State to submit a corrective SIP revision addressing this provision. *See* 80 FR 33965.

III. Why is EPA proposing this action?

In the SSM SIP Action, EPA granted the Sierra Club’s petition with respect to Knox County Regulation 32.1(C), finding this provision substantially inadequate to meet CAA requirements. Today’s action, if finalized, would remove the existing text of this provision from Knox County’s EPA-approved SIP regulation. EPA is proposing to find that this revision is consistent with the CAA and that it adequately addresses the SSM SIP call with respect to the Knox County portion of the Tennessee SIP.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Knox County Regulation 32.0 entitled “Use of Evidence,” effective November 12, 2015, which replaces the language previously included in Section 32.1(C) with “(Reserved).” EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve the Tennessee SIP revision consisting of replacing the language in Section 32.1(C) currently in the EPA-approved SIP for Knox County with “(Reserved).” EPA is proposing approval of the January 11, 2016, SIP revision because the

Agency has determined that it is in accordance with the requirements for SIP provisions under the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 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 proposed 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 proposed 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 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 13, 2016.

V. Anne Heard
Acting Regional Administrator,
Region 4.

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