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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0252; FRL-9957-90-Region 4]

Air Plan Approval; TN Infrastructure Requirements for the 2010 NO₂ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on portions of the State Implementation Plan (SIP) submission, submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on March 13, 2014, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 nitrogen dioxide (NO₂) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP submission. TDEC certified that the Tennessee SIP contains provisions that ensure the 2010 NO₂ NAAQS is implemented, enforced, and maintained in Tennessee. EPA has determined that portions of Tennessee’s infrastructure SIP submission, provided to EPA on March 13, 2014, satisfies the certain required infrastructure elements for the 2010 NO₂ NAAQS.

DATES: This rule will be effective [**insert 30 days after date of publication in the Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2015-0252. All documents in the docket are listed on the www.regulations.gov web site. 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 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: Richard Wong, 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. Mr. Wong can be reached via electronic mail at wong.richard@epa.gov or via telephone at (404) 562-8726.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On February 9, 2010 (75 FR 6474), EPA published a new 1-hour primary NAAQS for NO₂ 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. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour NO₂ NAAQS to EPA no later than January 22, 2013.

In a proposed rulemaking published on July 14, 2016, EPA proposed to approve Tennessee's infrastructure SIP submission for the applicable requirements of the 2010 1-hour NO₂ NAAQS, with the exception of the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J), and the interstate transport provisions of prongs 1, 2, and 4 of section 110(a)(2)(D)(i). On March 18, 2015, EPA approved Tennessee's March 13, 2014, infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) for the 2010 1-hour NO₂ NAAQS. *See* 80 FR 14019. Therefore, EPA is not taking any action today pertaining to these requirements. With respect to the interstate transport requirements of section 110(a)(2)(D)(i)(I) (prongs 1 and 2), EPA does not yet have a submission before the Agency for action. Additionally, EPA will address prong 4 element of Tennessee's March 13, 2014, SIP submission for the 2010 1-hour NO₂ NAAQS through a separate rulemaking. The details of Tennessee's submission and the rationale for EPA's action are explained in the proposed rulemaking.

II. Response to Comment

Comments on the proposed rulemaking were due on or before July 28, 2016. EPA received one comment, which is summarized below, on the proposed action.

Comment: The Commenter stated that EPA must disapprove element 110(a)(2)(C) unless Tennessee's SIP provides that no new minor source or minor modification of a major source can cause or contribute to a violation of any NAAQS.

Response: EPA agrees that section 110(a)(2)(C) and the minor new source regulations at 40 CFR sections 51.160 through 51.164 require SIPs to include procedures to prevent the construction of new minor sources and minor modifications of major sources if the new or modified source will interfere with attainment or maintenance of a NAAQS. EPA explained its approach to reviewing the minor source element of 110(a)(2)(C) in its proposed rulemaking for this action: "EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs." *See* 81 FR 45441 (July 14, 2016). In its 2010 1-hour NO₂ NAAQS infrastructure SIP submission, Tennessee certified that its SIP contains provisions to address the 110(a)(2)(C) requirements regarding new minor sources and modifications, and, as noted in EPA's proposed rulemaking, the following SIP-approved rules address the minor source element of section 110(a)(2)(C): Tennessee Air Pollution Control Regulations 1200-03-09-.01, *Construction Permits*, and 1200-03-09-.03, *General Provisions*. These SIP-approved rules address NAAQS pollutants including NO₂. While the Commenter did not specifically object to any aspect of Tennessee's SIP submission with respect section

110(a)(2)(C), EPA notes that Tennessee's SIP addresses this non-interference component for the minor new source/minor modification permitting element. Specifically relevant to this comment, these SIP-approved rules include provisions to prohibit the issuance of construction permits if the source at issue would result in a violation of any air quality standard. *See* Regulation 1200-03-09-.01(1)(e).

III. Final Action

With the exception of the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), prong 3 of (D)(i), and (J), and the interstate transport provisions pertaining to visibility of prong 4 of section 110(a)(2)(D)(i), EPA is taking final action to approve that Tennessee's March 13, 2014, SIP submission for the 2010 1-hour NO₂ NAAQS because the submission is consistent with section 110 of the CAA.

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 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 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 (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.

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 [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 20, 2016.

Heather McTeer Toney,

Regional Administrator,

Region 4.

For the reasons stated in the preamble, 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 RR - Tennessee

2. Section 52.2220(e) is amended by adding a new entry “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO₂ NAAQS” at the end of the table to read as follows:

§52.2220 Identification of plan.

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(e) * * *

EPA-Approved Tennessee Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO ₂ NAAQS	Tennessee	03/13/2014	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	With the exception of sections: 110(a)(2)(C) and (J) concerning PSD permitting requirements and; 110(a)(2)(D)(i) (prongs 1 through 4) concerning interstate transport requirements.

<FRDOC> [FR Doc. 2017–00161 Filed 1–11–17; 8:45 am]

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