



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2017-0344; FRL-9986-82-Region 1]

**Air Plan Approval; New Hampshire; Infrastructure State Implementation Plan
Requirements for the 2012 PM_{2.5} NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two State Implementation Plan (SIP) submissions from New Hampshire that address the infrastructure SIP requirements, including the interstate transport requirements, of the Clean Air Act (CAA or Act) for the 2012 fine particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The approval does not address CAA section 110(a)(2)(K) (regarding air quality modeling and data), which EPA will address in a later rulemaking. The infrastructure SIP requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities with respect to this NAAQS under the CAA, including the obligations related to transport. The EPA is taking this action under the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2017-0344. All documents in the docket are listed on the

<https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., 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 at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact 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 legal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912, tel. (617) 918-1684; simcox.alison@epa.gov.

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

Table of Contents

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

On April 10, 2018 (83 FR 15343), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Hampshire. The NPRM proposed approval of two SIP submissions from the New Hampshire Department of Environmental Services (NHDES), which included an infrastructure SIP submission for the 2012 fine particle ($PM_{2.5}$ ¹) National Ambient Air Quality Standard (NAAQS) submitted by the state on December 22, 2015, and a separate SIP submission addressing the “Good Neighbor” (or “transport”) provisions for the 2012 $PM_{2.5}$ NAAQS (Section 110(a)(2)(D)(i)(I) of the CAA) submitted by the state on June 8, 2016.

This rulemaking does not cover three substantive areas that are not integral to acting on a state’s infrastructure SIP submission: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (“SSM” emissions) that may be contrary to the CAA and EPA’s policies addressing such excess emissions; (ii) existing provisions related to “director’s variance” or “director’s discretion” that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (“director’s discretion”); and, (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA’s “Final New Source Review (NSR) Improvement Rule,” 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (“NSR Reform”). Instead, EPA has the authority to address each of these substantive areas separately. A detailed history, interpretation, and rationale for EPA’s approach to infrastructure SIP requirements can be found in EPA’s May 13, 2014, proposed rule entitled, “Infrastructure SIP Requirements for the 2008 Lead NAAQS” in the section, “What is the scope of this rulemaking?” *See* 79 FR 27241 at 27242–45.

¹ $PM_{2.5}$ refers to particulate matter of 2.5 microns or less in diameter, often referred to as “fine” particles.

The rationale for EPA's proposed action is explained in the NPRM and will not be restated here.

II. Response to Comments

EPA received six sets of comments during the comment period. Only one set includes significant, adverse comment, and it relates solely to section 110(a)(2)(K) of the Act (regarding air quality modeling and data). In the NPRM, EPA proposed to approve NHDES' submissions for the 2012 PM_{2.5} NAAQS for the infrastructure requirements of Section 110(a)(2)(A) through (M), including (K). In this rulemaking, EPA is finalizing the approval of New Hampshire's submissions for the infrastructure requirements of section 110(a)(2)(A) through (M), *except* (K). EPA will take separate action at a later date addressing these comments and the section 110(a)(2)(K) requirements for New Hampshire's infrastructure SIP submissions for the 2012 PM_{2.5} NAAQS.

The other five sets of comments we received all discuss subjects outside the scope of an infrastructure SIP action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and, indeed, make no specific mention of the proposed action. Consequently, those five sets of comments are not germane to this rulemaking and require no further response.

III. Final Action

EPA is approving New Hampshire's December 2015 and June 2016 infrastructure SIP submissions for the 2012 PM_{2.5} NAAQS, except for Section 110(a)(2)(K) (regarding air quality modeling and data), which EPA will address in a later rulemaking.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. 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);
- This action is not an Executive Order 13771 regulatory action because this action is not significant 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 (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 Clean Air Act; 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 28, 2018.

Alexandra Dunn,
Regional Administrator,
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 EE—New Hampshire

2. Amend § 52.1520 in the table in paragraph (e) by adding an entry for “Submittals to meet Section 110(a)(2) Infrastructure Requirements for the 2012 PM_{2.5} NAAQS” at the end of the table to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(e) * * *

NEW HAMPSHIRE NONREGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
**	*	*	*	**
Submittals to meet Section 110(a)(2) Infrastructure Requirements for the 2012 PM _{2.5} NAAQS	Statewide	12/22/2015; supplement submitted 6/8/2016.	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	These submittals are approved with respect to the following CAA requirements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (L), and (M).