



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0759 FRL-9990-67-Region 4]

Air Plan Approval; Tennessee;

Interstate Transport (Prongs 1 and 2) for the 2010 1-Hour NO₂ Standard

AGENCY: Environmental Protection Agency (EPA).

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 & Conservation (TDEC), through a letter dated May 14, 2018, for the purpose of addressing the Clean Air Act (CAA or Act) “good neighbor” interstate transport (prongs 1 and 2) infrastructure SIP requirements for the 2010 1-hour 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, commonly referred to as an “infrastructure SIP.” Specifically, EPA is proposing to approve Tennessee’s May 14, 2018, SIP revision addressing prongs 1 and 2 to ensure that air emissions in the State do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour NO₂ NAAQS in any other state.

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-2018-0759 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: Evan Adams of 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. Mr. Adams can be reached by phone at (404) 562-9009 or via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 22, 2010, EPA established 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.¹ See 75 FR 6474 (February 9, 2010). This NAAQS is designed to protect against exposure to the entire group of nitrogen oxides (NO_x). NO₂ is the component of greatest concern and is used as the indicator for the larger group of NO_x. Emissions that lead to the formation of NO₂ generally also lead to the formation of other NO_x. Therefore, control measures that reduce NO₂ can generally be expected to reduce population exposures to all gaseous NO_x which may have the co-benefit of reducing the formation of ozone and fine particles both of which pose significant public health threats. For comprehensive information on the 2010 1-hour NO₂ NAAQS, please refer to the February 9, 2010 Federal Register notice. See 75 FR 6474.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS.² This particular type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions

¹ Subsequently, after careful consideration of the scientific evidence and information available, on April 18, 2018, EPA published a final action to retain the current NO₂ standard at the 2010 level of 100 ppb. This action was taken after review of the full body of available scientific evidence and information, giving particular weight to the assessment of the evidence in the 2016 NO_x Integrated Science Assessment; analyses and considerations in the Policy Assessment; the advice and recommendations of the Clean Air Scientific Advisory Committee; and public comments. See 83 FR 17226 (April 18, 2018).

² States were required to submit infrastructure SIPs for the 2010 1-hour NO₂ NAAQS to EPA no later than January 22, 2013.

and through regional actions on infrastructure submissions.³ Unless otherwise noted below, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.⁴ EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIPs. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). EPA sometimes refers to the prong 1 and prong 2 conjointly as the "good neighbor" provision of the CAA. The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) and from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to

³ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on Tennessee's infrastructure SIP to address other 110(a)(2) elements for the PM_{2.5} NAAQS entitled "Air Quality Plans; Tennessee; Infrastructure Requirements for the 2012 PM_{2.5} National Ambient Air Quality Standard;" in the section "What is EPA's approach to the review of infrastructure SIP submissions?" See 82 FR 2295 at 2296-2299 (January 9, 2017).

⁴ See *Montana Environmental Information Center v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

EPA's most recent infrastructure SIP guidance, the September 13, 2013, "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," did not explicitly include criteria for how the Agency would evaluate infrastructure SIP submissions intended to address section 110(a)(2)(D)(i)(I).⁵ With respect to certain pollutants, such as ozone and particulate matter (PM), EPA has addressed interstate transport in eastern states in the context of regional rulemaking actions that quantify state emission reduction obligations.⁶ For NO₂, EPA has considered available information such as current air quality, emissions data and trends, and regulatory provisions that control source emissions to determine whether emissions from one state interfere with the attainment or maintenance of the NAAQS in another state. EPA's review and proposed action on Tennessee's CAA section 110(a)(2)(D)(i)(I) interstate transport SIP revisions for the 2010 NO₂ NAAQS is informed by these considerations.

⁵ At the time the September 13, 2013, guidance was issued, EPA was litigating challenges raised with respect to its Cross-State Air Pollution Rule (CSAPR), 76 FR 48208 (August 8, 2011), designed to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements with respect to the 1997 ozone and the 1997 and 2006 PM_{2.5} NAAQS. CSAPR was vacated and remanded by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in 2012 pursuant to *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7. EPA subsequently sought review of the D.C. Circuit's decision by the Supreme Court, which was granted in June 2013. As EPA was in the process of litigating the interpretation of section 110(a)(2)(D)(i)(I) at the time the infrastructure SIP guidance was issued, EPA did not issue guidance specific to that provision. The Supreme Court subsequently vacated the D.C. Circuit's decision and remanded the case to that court for further review. 134 S. Ct. 1584 (2014). On July 28, 2015, the D.C. Circuit issued a decision upholding CSAPR, but remanding certain elements for reconsideration. 795 F.3d 118.

⁶ Nitrogen Oxides (NOx) SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); CSAPR, 76 FR 48208 (August 8, 2011).

Through this proposed action, EPA is proposing to approve Tennessee's May 14, 2018, SIP revision addressing prong 1 and prong 2 requirements for the 2010 1-hour NO₂ NAAQS.⁷ The State addressed CAA section 110(a)(2)(D)(i)(I) by providing information supporting its conclusion that emissions from Tennessee do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour NO₂ NAAQS. All other applicable infrastructure SIP requirements for Tennessee for the 2010 1-hour NO₂ NAAQS have been addressed in separate rulemakings. *See* 80 FR 14019 (March 18, 2015) and 82 FR 27428 (June 15, 2017).

II. What is EPA's Analysis of How Tennessee Addressed Prongs 1 and 2?

In Tennessee's May 14, 2018, SIP revision, the State concluded that its SIP adequately addresses prongs 1 and 2 with respect to the 2010 1-hour NO₂ NAAQS. Tennessee provides the following reasons for its determination: (1) the most recent valid design values for the 1-hour NO₂ standard in Tennessee and the neighboring states of Arkansas, Georgia, Kentucky, Missouri, North Carolina, South Carolina, and Virginia are below the 2010 standard; (2) total emissions of NO_x in the State have trended downward since 2008; and (3) the SIP contains state regulations that directly or indirectly control NO_x emissions. EPA preliminarily agrees with the State's conclusion based on the rationale discussed below.

First, EPA notes that there are no designated nonattainment areas for the 2010 1-hour NO₂ NAAQS in Tennessee or the neighboring states. On February 17, 2012 (77 FR 9532), EPA designated the entire country as "unclassifiable/attainment" for the 2010 1-hour NO₂ NAAQS, stating that "available information does not indicate that the air quality in these areas exceeds the 2010 1-hour NO₂ NAAQS."

⁷ EPA received this SIP revision on May 16, 2018.

Second, the 2015-2017 NO₂ design values in Tennessee and neighboring states are well below the 2010 1-hour NO₂ NAAQS standard of 100 ppb. The highest monitored 2015-2017 valid design values for the neighboring states of Arkansas, Georgia, Kentucky, Missouri, North Carolina, South Carolina, and Virginia are below the 2010 standard (at 42, 56, 49, 49, 38, 42, and 45 ppb, respectively).⁸ The design values in Tennessee, and neighboring states, during this time period were 44 to 62 percent below the NAAQS. During the 2015-2017 time period, Georgia recorded the highest monitored 98th percentile concentration value in the neighboring states (61.1 ppb in 2016).

Third, total NO_x emissions data provided by the State shows that NO_x emissions in Tennessee decreased from 430,384 tons in 2008 to 271,383 tons in 2014, a reduction of approximately 37 percent.⁹ The area, nonroad, onroad, and point sources are all considered in the total emissions data provided by the State. Onroad vehicles continue to be the largest emitters of NO_x in Tennessee, emitting 131,422 tons according to the 2014 data. Despite onroad mobile sources being the primary contributors to NO_x emissions, the data from Tennessee's submittal shows a 35 percent decrease in onroad mobile emissions from 2008 to 2014.

Finally, Tennessee identifies the following SIP-approved State rules that directly or indirectly control NO_x emissions: Rule 1200-03-09-.01 - *Construction Permits* (regulating the construction of new sources and the modification of existing sources); Rule 1200-03-06-.03 -

⁸ Monitoring sites must meet the data completeness requirements listed in Appendix S to 40 CFR Part 50 in order to have a valid design value. Table 1 in Tennessee's submittal and EPA's air quality design value website - <https://www.epa.gov/air-trends/air-quality-design-values> - indicate that not all design values are valid for the neighboring states of Kentucky (41), Missouri (45), North Carolina (39), South Carolina (38), and Virginia (38) (the parentheses contain the highest invalid design value in ppb for each state as reported in EPA's air quality design value website). Additionally, Alabama and Mississippi have no valid 2015-2017 NO₂ design values.

⁹ See Table 2 in Tennessee's submittal, which is based on emissions trends data extracted from the EPA website at <https://www.epa.gov/air-emissions-inventories/air-pollutants-emissions-trends-data>.

General Provisions and Rule 1200-03-07-.07 - *General Provisions and Applicability for Process Gaseous Emission Standards* (both regulating gaseous emissions from non-process and process emission sources); and Rule 1200-03-13-.01 - *Violation Statement* (providing for enforcement actions for failure to comply with Tennessee air regulations).

For all the reasons discussed above, EPA has preliminarily determined that Tennessee does not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour NO₂ NAAQS in any other state and that Tennessee's SIP includes adequate provisions to prevent emissions sources within the State from significantly contributing to nonattainment or interfering with maintenance of this standard in any other state.

III. Proposed Action

As described above, EPA is proposing to approve Tennessee's May 14, 2018, SIP revision addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) for the 2010 1-hour NO₂ NAAQS.

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. This action merely proposes to approve 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);
- 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 (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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: February 27, 2019.

Mary S. Walker,
Acting Regional Administrator,
Region 4.

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