



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0720, EPA-R04-OAR-2018-0759; FRL-9993-71-Region 4]

Air Plan Approval; GA and TN;

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Georgia, through the Georgia Environmental Protection Division (Georgia EPD), via a letter dated July 24, 2018, and the State of Tennessee, through the Tennessee Department of Environment & Conservation (TDEC), via 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 approving these SIP revisions addressing prongs 1 and 2 to ensure that air emissions in each of these two states do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour NO₂ NAAQS in any other state.

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

ADDRESSES: EPA has established dockets for these actions under Docket Identification Nos. EPA-R04-OAR-2018-0720 and EPA-R04-OAR-2018-0759. All documents in these dockets are listed on the www.regulations.gov web site. Although listed in the index, some information may not be 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 and Radiation Division (formerly the 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: Evan Adams of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation 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. *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. 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 and through regional actions on infrastructure submissions. 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 implementation

plan for compliance with statutory and regulatory requirements, not for the state's implementation of its SIP. EPA has other authority to address any issues concerning a state's implementation of the regulations 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 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). 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. For NO₂, EPA has considered available information from states 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 actions on Georgia's and Tennessee's CAA section 110(a)(2)(D)(i)(I) interstate transport SIP revisions for the 2010 NO₂ NAAQS are informed by these considerations.

In notices of proposed rulemaking (NPRMs) for Georgia (published on March 11, 2019, at 84 FR 8645), and Tennessee (published on March 11, 2019, at 84 FR 8643), EPA proposed to approve the Georgia and Tennessee SIP submissions on the basis that their SIPs adequately address prong 1 and prong 2 requirements for the 2010 1-hour NO₂ NAAQS. The details of the Georgia and Tennessee submissions and the rationale for EPA's actions are explained in the NPRMs.¹

Comments on both proposed rulemakings were due on or before April 10, 2019. EPA received no comments on the NPRM related to the Georgia submittal and one comment on the NPRM related to the Tennessee submittal.² The sole comment on the Tennessee submittal is not a significant comment requiring a response because it is generalized and unsupported.³

¹ EPA notes that it is only making a determination that the States' already-approved SIPs meet certain CAA requirements. EPA is not approving or removing any rules from the Georgia or Tennessee SIP.

² The comment on the Tennessee submittal is located in the docket for this action.

³ See, e.g., *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35 n.58 (D.C. Cir. 1977) (citing *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 393-94 (D.C. Cir. 1973) ("In determining what points are significant, the 'arbitrary and capricious' standard of review must be kept in mind. Thus only comments which, if true, raise points relevant to the agency's decision and which, if adopted, would require a change in an agency's proposed rule cast doubt on the reasonableness of a position taken by the agency. Moreover, comments which themselves are purely speculative and do not disclose the factual or policy basis on which they rest require no response. There must be some basis for thinking a position taken in opposition to the agency is true."); *Public Citizen, Inc. v. FAA*, 988 F.2d 186, 197 (D.C. Cir. 1993) (citing *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35 n.58 (D.C. Cir. 1977)) ("We reiterate that to require

II. Final Actions

As described above, EPA is approving the infrastructure SIP submissions transmitted under cover letter by the Georgia EPD on July 24, 2018, and TDEC on May 14, 2018, addressing prongs 1 and 2 of section 110(a)(2)(D)(i)(I) for the 2010 1-hour NO₂ NAAQS. EPA is approving these infrastructure SIP revisions because they are consistent with section 110 of the CAA.

III. 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. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

response by the agency, comments must do more than simply state that the agency's premises or conclusions are wrong; they must explain why and on what basis the agency assertedly has erred.").

- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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 SIPs are 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, these rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they 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 these actions 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. These actions are not “major rules” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by **insert date 60 days from date of publication in the Federal Register**. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of these actions 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 rules or actions. These actions may not be challenged later in proceedings to enforce their 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.

Dated: May 6, 2019.

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

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 L—Georgia

2. In § 52.570, paragraph (e) is amended by adding an entry for “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO₂ NAAQS” at the end of the table to read as follows:

§ 52.570 Identification of plan.

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(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	* *	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO ₂ NAAQS	Georgia	07/24/18	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) only.

Subpart RR—Tennessee

3. In § 52.2220, paragraph (e) is amended by adding an entry for “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 non-regulatory 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	05/14/18	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) only.

[FR Doc. 2019-10187 Filed: 5/16/2019 8:45 am; Publication Date: 5/17/2019]