



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0203; FRL-10005-11-Region 4]

**Air Plan Approvals; Tennessee; Prevention of Significant Deterioration Infrastructure
Requirements for the 2015 Ozone NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve portions of the Tennessee infrastructure State Implementation Plan (SIP) submission for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) provided to EPA on September 13, 2018. Whenever EPA promulgates a new or revised NAAQS, the Clean Air Act (CAA or Act) requires that states adopt and submit a SIP for the implementation, maintenance, and enforcement of each such NAAQS, commonly referred to as an “infrastructure SIP.” Specifically, EPA is proposing to conditionally approve the portions of the Tennessee infrastructure SIP submission related to the prevention of significant deterioration (PSD) infrastructure elements for the 2015 8-hour ozone NAAQS.

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-2019-0203, 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: Nacosta C. Ward 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. Ms. Ward can be reached by telephone at (404) 562-9140 or via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable 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 elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly

referred to as an “infrastructure SIP.” States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.¹

EPA is proposing to conditionally approve² the portions of Tennessee’s September 13, 2018, SIP revision provided to EPA through the Tennessee Department of Environment and Conservation (TDEC) that address the PSD-related infrastructure SIP requirements under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prohibiting interference with PSD in other states), and 110(a)(2)(J) (also referred to as infrastructure elements C, D(i) prong 3, and J, respectively) of the 2015 8-hour ozone NAAQS. These provisions are discussed in further detail in Section III, below. All other applicable infrastructure SIP requirements for this SIP submission have been or will be addressed in separate rulemakings.

With respect to the PSD elements of 110(a)(2)(C) and (J), EPA interprets the CAA to require each state to make, for each new or revised NAAQS, an infrastructure SIP submission that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated new source review (NSR) pollutants. The requirements of element 110(D)(i)(II) (prong 3) may also be satisfied by demonstrating that the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants.

II. What is EPA’s Approach to the Review of Infrastructure SIP Submissions?

As discussed above, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to submit infrastructure SIPs that meet the various requirements of CAA

¹ In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

² Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval automatically becomes a disapproval on that date and EPA will issue a finding of disapproval.

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.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 implementation plan for facial 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.

III. What are the Infrastructure Requirements for Sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J) for Tennessee?

Section 110(a)(2)(C) has three components that must be addressed in infrastructure SIP submissions: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and PSD permitting of new major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by the CAA title I part C (*i.e.*, the major source PSD program).

Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two

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_FI_NAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on Tennessee infrastructure SIP to address the 2010 Nitrogen Dioxide NAAQS. *See* 81 FR 45438 (July 14, 2016).

⁴ *See* *Mont. Env'tl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

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 interfering with maintenance of the NAAQS in another state (“prong 2”). 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 interfering with measures required to prevent significant deterioration of air quality in another state (“prong 3”), or to protect visibility in another state (“prong 4”).

Section 110(a)(2)(J) has four components related to: 1) consultation with government officials, 2) public notification, 3) PSD, and 4) visibility protection.

This proposed rulemaking relates only to the PSD-related requirements of sections 110(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J) which as previously described, requires that the SIP contain adequate provisions to provide for the preconstruction PSD permitting for major sources and prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state. More information on these requirements and EPA’s rationale for this proposal that Tennessee is conditionally meeting this requirement for purposes of the 2015 8-hour ozone NAAQS is provided below. All other applicable infrastructure requirements for the 2015 8-hour ozone NAAQS have been or will be addressed in separate rulemakings.

IV. What is EPA’s Analysis of How Tennessee Addressed Relevant Portions of Sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J)?

110(a)(2)(C) Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:

For the major source PSD program sub-element of section 110(a)(2)(C), EPA interprets the

CAA to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the PSD requirements for all regulated NSR pollutants.⁵ A state's PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all PSD requirements that are due under EPA regulations or the CAA on or before the date of EPA's proposed action on the infrastructure SIP submission. Tennessee's 2015 8-hour ozone NAAQS infrastructure SIP submission cites a number of SIP provisions to address the major source PSD program sub-element of section 110(a)(2)(C) as described below.

Tennessee's infrastructure SIP submission cites Tennessee Air Pollution Control Regulations (TAPCR) 1200-03-09-.01(4) "*Prevention of Significant Deterioration of Air Quality*" to meet the PSD program requirements of 110(a)(2)(C). These SIP-approved regulations were submitted to EPA by Tennessee to provide that new major sources and major modifications in areas of the State designated attainment or unclassifiable for any given NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA. However, the Tennessee SIP does not contain or reference the most recent version of EPA's *Guideline on Air Quality Models*, codified at 40 CFR part 51, Appendix W.⁶ EPA's PSD regulations at 40 CFR 51.166(l) require that modeling be conducted in accordance with Appendix W. As detailed in EPA's September 2013 infrastructure SIP guidance, approval of element C requires a fully approved PSD permitting program, which requires application of Appendix W consistent with EPA's PSD implementing regulations, and approval of elements

⁵ See EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."

⁶ EPA approved the most recent version of Appendix W on January 17, 2017, at 82 FR 5182.

D(i)(II) and J is contingent on an approvable PSD program. Therefore, Tennessee has committed to update their PSD regulations to reference the most current version of Appendix W and submit SIP revisions containing the revised regulations. The commitment is discussed in more detail later in this section.

110(a)(2)(D)(i)(II) – prong 3: With regard to prong 3 of section 110(a)(2)(D)(i)(II), a state may meet this requirement by a confirmation in its infrastructure SIP submission that new major sources and major modifications in the state are subject to a PSD program meeting current structural requirements of part C, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) a nonattainment NSR program. To meet prong 3, Tennessee cites its PSD program found in the Tennessee SIP at 1200-03-09-.01(4) “*Prevention of Significant Deterioration of Air Quality.*”

110(a)(2)(J) PSD: With regard to the PSD element of section 110(a)(2)(J), this requirement is met by a state’s confirmation in an infrastructure SIP submission that the state has a SIP-approved PSD program meeting all the current requirements of part C of title I of the CAA for all NSR regulated pollutants. To meet element J, Tennessee cites TAPCR 1200-03-09-.01(4) “*Prevention of Significant Deterioration of Air Quality.*”

As mentioned above, Tennessee cites to TAPCR 1200-03-09-.01(4) “*Prevention of Significant Deterioration of Air Quality*” to demonstrate that their respective SIPs meet the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3) and 110(a)(2)(J), but their SIP-approved PSD programs do not contain or reference the most recent version of Appendix W. On November 15, 2019, TDEC submitted a commitment letter to EPA requesting conditional approval of the PSD-related program requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3) and 110(a)(2)(J) of the aforementioned infrastructure SIP revision. In this letter,

Tennessee commits to satisfy the PSD program requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J) for the 2015 8-hour ozone NAAQS by revising their PSD regulations to reflect the most recent version of Appendix W and submitting SIP revisions containing these revised rules within, within one year of final conditional approval.⁷ If Tennessee meets its commitment within one year of final conditional approval, the PSD-related requirements of the conditionally approved infrastructure SIP submission will remain a part of the SIP until EPA takes final action approving or disapproving the new SIP revision. However, if the State fails to submit this revision within the one-year timeframe, the conditional approval will automatically become a disapproval one year from EPA's final conditional approval and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the FIP requirement under CAA section 110(c).

V. Proposed Action

EPA is proposing to conditionally approve the portions of Tennessee's September 13, 2018, 2015 8-hour ozone infrastructure SIP submission, respectively, that address the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J). All other outstanding applicable infrastructure requirements for this SIP submission have been or will be addressed in separate rulemakings.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies

⁷ See Tennessee's letter dated November 15, 2019, in the docket for this action, for a detailed description and schedule of adoption for the rules being modified. This letter is contained in the docket for this proposed action.

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 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, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 28, 2020.

Mary S. Walker

Regional Administrator,

Region 4.

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