



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0285; FRL-9705-7]

Approval and Promulgation of Implementation Plans; Tennessee 110(a)(1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve in part, and conditionally approve in part, the State Implementation Plan (SIP) submission, submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), as demonstrating that the State meets the SIP requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). Section 110(a) of 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. Tennessee certified that the Tennessee SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM₂ NAAQS are implemented, enforced, and maintained in Tennessee (hereafter referred to as “infrastructure submission”). With the exception of element 110(a)(2)(E)(ii), which pertains to the requirements of section 128(a)(1) of the CAA, Tennessee’s infrastructure submissions, provided to EPA on December 14, 2007, and October 19, 2009, addresses all the required infrastructure elements for the 1997 annual and 2006 24-hour PM₂ NAAQS.

EFFECTIVE DATE: 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-2012-0285. 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 Regulatory Development Section, Air Planning 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 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-

8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov.

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 36852), EPA promulgated a new annual PM_{2.5} NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour NAAQS. On June 11, 2012, EPA proposed to approve Tennessee's December 14, 2007, and October 19, 2009, infrastructure submissions for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS addressing elements 110(a)(2)(A)-(H), (J)-(M), except for section 110(a)(2)(C) nonattainment area requirements, 110(a)(2)(E)(ii) - board requirements; and section 110(a)(2)(D)(i) interstate transport requirements. See EPA's June 11, 2012,

proposed rulemaking at 77 FR 34306 for more detail. On March 28, 2012, Tennessee submitted a letter of commitment to EPA to adopt specific enforceable measures related to 128(a)(1) to address current deficiencies in the Tennessee SIP. As a result of Tennessee's March 28, 2012, commitment letter, EPA signed a final rule on June 25, 2012, determining that the conditional approval is appropriate because the State has explicitly committed to address current deficiencies in the Tennessee SIP related to element 110(a)(2)(E)(ii) for the 1997 8-hour ozone NAAQS consistent with the requirements of CAA section 110(k)(4). Tennessee's March 28, 2012, commitment letter related to section 128(a)(1) is also applicable to address 110(a)(2) requirements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. In EPA's June 11, 2012, proposed rulemaking, EPA is also proposed to approve in part and conditionally approve in part Tennessee's 1997 annual and 2006 24-hour PM_{2.5} infrastructure submissions with regards to section 110(a)(2)(E)(ii) based on the State's March 28, 2012, commitment letter. *See* 77 FR 34306. A summary of the background for today's final action is provided below.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier

SIP submissions in connection with previous PM NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below¹ and in EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards.”

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.²
- 110(a)(2)(D): Interstate transport.³

¹ Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today’s final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Tennessee’s SIP addresses 110(a)(2)(C).

² This rulemaking only addresses requirements for this element as they relate to attainment areas.

³ Today’s final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 PM_{2.5} NAAQS. Interstate transport requirements were formerly addressed by Tennessee consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve Tennessee’s SIP revision, which was submitted to comply with CAIR. *See* 72 FR 46388 (August 20, 2007). In so doing, Tennessee’s CAIR SIP revision addressed the interstate transport provisions in Section 110(a)(2)(D)(i) for the 1997 PM_{2.5} NAAQS. Concerning the 2006 PM_{2.5} NAAQS, EPA has finalized a new rule to address the interstate transport of NO_x and SO_x in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (“the Transport Rule”). On July 20, 2011 (76 FR 43180), EPA made a finding that Tennessee failed to submit

- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁴
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

As mentioned above, with respect to element 110(a)(2)(E)(ii), on June 11, 2012, EPA proposed to approve Tennessee’s December 14, 2007, and October 19, 2009, infrastructure submissions and proposed to approve in part, and conditionally approve in part, infrastructure element 110(a)(2)(E)(ii) for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. *See* 77 FR 34306. EPA proposed conditional approval in part for element 110(a)(2)(E)(ii) because the State’s implementation plan does not contain provisions to address the requirements of CAA

a SIP that addresses the requirements of section 110(a)(2)(D)(i)(I) of the CAA for the revised 2006 24-hour PM_{2.5} NAAQS. This finding created a 2-year deadline for the promulgation of a Federal Implementation Plan (FIP) by EPA for Tennessee unless the State submits a SIP to satisfy these section 110(a)(2)(D)(i)(I) requirements, and EPA approves such submission prior to promulgation of a FIP.

⁴ This requirement was inadvertently omitted from EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” but as mentioned above is not relevant to today’s final rulemaking.

section 128(a)(1), that requires that each SIP shall contain requirements that any board or body which approves permits or enforcement orders be subject to the described public interest and income restrictions. EPA proposed approval in part, of this element because the State's implementation plan contains provisions to address the requirements of CAA section 128(a)(2), that requires that any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements. *See* 77 FR 34306.

In this action, EPA is taking two actions regarding the section 110(a)(2)(E)(ii) requirements. First, EPA is finalizing its conditional approval for part of Tennessee's infrastructure SIP for element 110(a)(2)(E)(ii) with respect to the applicable section 128(a)(1) requirements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Second, EPA is approving the remaining infrastructure submissions as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

On March 28, 2012, Tennessee submitted a letter of commitment to EPA to adopt specific enforceable measures related to 128(a)(1) to address current deficiencies in the Tennessee SIP. This letter of commitment meets the requirements of section 110(k)(4) of the CAA. As a result of Tennessee's March 28, 2012, commitment letter, EPA signed a final rule on June 25, 2012, determining that the conditional approval is appropriate because the State has explicitly committed to address current deficiencies in the Tennessee SIP related to element 110(a)(2)(E)(ii) for the 1997 8-hour ozone NAAQS consistent with the requirements of CAA

section 110(k)(4). Tennessee's March 28, 2012, letter can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2011-0353.

As mentioned above, EPA conditionally approved the Tennessee's infrastructure SIP for the 1997 8-hour ozone NAAQS with respect to the CAA requirement of element 110(a)(2)(E)(ii). EPA anticipates that Tennessee's action with respect to that conditional approval will satisfy today's 110(a)(2)(E)(ii) conditional approval for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Tennessee must submit to EPA (within one year from the date of publication for the final rule that EPA signed on June 25, 2012, for the 1997 8-hour ozone NAAQS), a SIP revision adopting specific enforceable measures related to CAA section 128(a)(1) as described in the State's letter of commitment described above. If the State fails to actually submit this revision within one year from the date of publication for the final rule that EPA signed on June 25, 2012, today's conditional approval will automatically become a disapproval on that date 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 Federal Implementation Plan requirement under section 110(c). However, if the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. A summary of the background for today's final action is provided below. See EPA's June 11, 2012, proposed rulemaking at 77 FR 34306 for more detail.

II. This Action

EPA is taking final action to approve Tennessee's infrastructure submissions as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of

the CAA for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, with the exception of section 110(a)(2)(E)(ii). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. Tennessee certified that the Tennessee SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM_{2.5} NAAQS are implemented, enforced, and maintained in Tennessee.

On July 16, 2012, EPA signed a final rulemaking action approving revisions to Tennessee’s New Source Review (NSR) requirements relating to PM_{2.5}. EPA is not taking action today on Tennessee’s NSR program, as these requirements are already approved in Tennessee’s SIP. Additionally, EPA received no adverse comments on its June 11, 2012, proposed approval of Tennessee’s December 14, 2007, and October 19, 2009, infrastructure submissions, which is being finalized today.

Tennessee’s infrastructure submissions, provided to EPA on December 14, 2007, and October 19, 2009, address all the required infrastructure elements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, with the exception of CAA section 110(a)(2)(E)(ii), pertaining to section 128(a)(1) requirements. EPA has determined that Tennessee’s December 14, 2007, and October 19, 2009, submissions are consistent with section 110 of the CAA, and thus is approving Tennessee’s infrastructure submissions, with the exception of CAA section 110(a)(2)(E)(ii), pertaining to section 128(a)(1) requirements. With respect to CAA section 110(a)(2)(E)(ii), pertaining to section 128(a)(1) requirements, EPA is conditionally approving Tennessee’s 1997 annual and 2006 24-hour PM_{2.5} infrastructure submissions.

III. Final Action

As already described, TDEC has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that 1997 annual and 2006 24-hour PM_{2.5} NAAQS are implemented, enforced, and maintained in Tennessee. EPA is taking final action to approve in part, and conditionally approve in part, Tennessee's December 14, 2007, and October 19, 2009, submissions for 1997 annual and 2006 24-hour PM_{2.5} NAAQS because these submissions are 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. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not 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, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 16, 2012

A. Stanley Meiburg

Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52-[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

2. Amend § 52.2219 by designating the existing undesignated paragraph as paragraph (a), and adding paragraph (b) to read as follows:

§ 52.2219 Conditional approval.

(a) * * *

(b) Conditional Approval—Submittals from the State of Tennessee, through the Department of Environment and Conservation (TDEC), dated December 14, 2007, and October 19, 2009, to address the Clean Air Act (CAA) infrastructure requirements for the 1997 annual and 2006 24-hour PM_{2.5} National Ambient Air Quality Standards. With respect to CAA section 110(a)(2)(E)(ii), specifically related to the adoption of enforceable measures contained in CAA section 128(a)(1), EPA conditionally approved TDEC’s March 28, 2012, commitment on June 25, 2012. Tennessee must submit to EPA by July 23, 2013, SIP revisions adopting specific enforceable measures related to CAA sections 128(a)(1) as described in the State’s letter of commitment.

3. Section 52.2220(e) is amended by adding two new entries for “110(a)(1) and (2) Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards” and “110(a)(1) and (2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards” at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-Approved Tennessee 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 1997 Fine Particulate Matter National Ambient Air Quality Standards	Tennessee	12/14/2007	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards	Tennessee	10/19/2009	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	