



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[EPA-HQ-OAR-2012-0486, FRL-9789-2]

RIN 2060 - AR59

Revision to Ambient Nitrogen Dioxide Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing revisions to the deadlines established in the national ambient air quality standard (NAAQS) for nitrogen dioxide (NO₂) for the near-road component of the NO₂ monitoring network in order to implement a phased deployment approach. This approach will create a series of deadlines that will make the near-road NO₂ network operational between January 1, 2014, and January 1, 2017. The EPA is also finalizing revisions to the approval authority for annual monitoring network plans for NO₂ monitoring.

DATES: This final rule is effective [**Insert date of publication in the Federal Register**].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2012-0486. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 either electronically through www.regulations.gov or in hard copy at the Revision to Ambient Nitrogen Dioxide Monitoring Requirements Docket, Docket ID No. EPA-HQ-OAR-2012-0486, EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday excluding legal holidays. The docket telephone number is (202) 566-1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

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I. Background

On February 9, 2010, the EPA promulgated minimum monitoring requirements for the NO₂ monitoring network in support of the revised NO₂ NAAQS (75 FR 6474). The NO₂ NAAQS was revised to include a 1-hour standard with a 98th percentile form averaged over three years and a level of 100 parts per billion (ppb), reflecting the maximum allowable NO₂ concentration anywhere in an area, while retaining the annual standard of 53 ppb.

As part of the NAAQS rulemaking, the EPA promulgated revisions to requirements for minimum numbers of ambient NO₂ monitors that included new monitoring near major roads in larger urban areas. In addition, those monitoring revisions included requirements to characterize NO₂ concentrations representative of wider spatial scales in larger urban areas (area-wide monitors), and monitors intended to characterize NO₂ exposures of susceptible and vulnerable populations. Specifically, the requirements for these minimum monitoring requirements are as follows:

The first tier of the ambient NO₂ monitoring network requires near-road monitoring.¹ There must be one microscale near-road NO₂ monitoring station in each Core Based Statistical Area (CBSA) with a population of 500,000 or more persons to monitor a location of expected maximum hourly concentrations sited near a major road. An additional near-road NO₂ monitoring station is required at a second location of expected maximum hourly concentrations for any CBSA with a population of 2,500,000 or more persons, or in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater Annual Average Daily Traffic (AADT). Based upon 2010 census data and data maintained by the U.S. Department of

¹ See 40 CFR part 58, Appendix D, section 4.3.2.

Transportation Federal Highway Administration on the most heavily trafficked roads in the U.S.

(<http://www.fhwa.dot.gov/policyinformation/tables/02.cfm>), approximately 126 near-road NO₂ sites are required within 103 CBSAs nationwide.

The second tier of the NO₂ minimum monitoring requirements is for area-wide NO₂ monitoring.² There must be one monitoring station in each CBSA with a population of 1,000,000 or more persons to monitor a location of expected highest NO₂ concentrations representing the neighborhood or larger spatial scales. These NO₂ monitors are referred to as area-wide monitors. Based on 2010 census data, approximately 52 area-wide NO₂ sites are required within 52 CBSAs.

The third tier of the NO₂ minimum monitoring requirements is for the characterization of NO₂ exposure for susceptible and vulnerable populations.³ The EPA Regional Administrators, in collaboration with states, must identify a minimum of 40 additional NO₂ monitoring stations nationwide, in addition to the above minimum monitoring requirements for near-road and area-wide monitors, primarily focusing on siting these monitors in locations to protect susceptible and vulnerable populations.

² See 40 CFR part 58, Appendix D, section 4.3.3.

³ See 40 CFR part 58, Appendix D, section 4.3.4.

The 2010 NO₂ NAAQS revision required states to submit a plan for establishing all required NO₂ monitoring sites to the EPA Administrator by July 1, 2012. The rule also required all required monitoring stations to be operational by January 1, 2013.

II. Changes to the Ambient NO₂ Monitoring Requirements

This rulemaking will result in the following actions: 1) a change to the dates by which required near-road NO₂ monitors will need to be identified in state Annual Monitoring Network Plans; 2) a change to the dates by which required near-road NO₂ monitors shall be operational; and 3) a shift in the authority to approve NO₂ monitoring plans from the EPA Administrator to the EPA Regional Administrators.

A. Near-road NO₂ Monitoring Network Implementation

We are finalizing a phased implementation approach, as proposed (77 FR 64244), to allow more time for states to establish the required near-road NO₂ monitors on a schedule consistent with available resources. No changes are being made with regard to the implementation timing requirements for area-wide monitoring and for monitoring to characterize NO₂ exposures for susceptible and vulnerable populations.

1. Proposed Changes

In consideration of the limited availability of state and federal resources to implement all required near-road NO₂ sites

by 2013, the EPA proposed to change the dates by which required near-road NO₂ monitors are to be identified in annual monitoring network plans and physically established. The EPA proposed a phased implementation approach, where subsets of the required near-road NO₂ monitors will be funded and become operational over the course of multiple years. Although the requirement to install these monitors is not dependent on the availability of federal funds, the EPA believes that it will be able to identify sufficient grant funding over time to support this phase-in approach, which would allow states to ultimately complete the near-road network with federally supplied funds.

The EPA proposed the phased implementation for near-road NO₂ monitors as follows:

- a) For each CBSA with population of 1,000,000 or more persons, one near-road monitor shall be reflected in the state Annual Monitoring Network Plan submitted July 1, 2013, and that monitor shall be operational by January 1, 2014.
- b) For each CBSA that is required to have two near-road monitors (either because the CBSA has a population of 2,500,000 or more persons or any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts), the second near-road monitor shall be reflected in the state Annual Monitoring Network Plan submitted July 1, 2014, and that monitor shall be operational by January 1, 2015.

c) For each CBSA having a population of at least 500,000 or more persons (but less than 1,000,000), one near-road NO₂ monitor shall be reflected in the state Annual Monitoring Plan submitted July 1, 2016, and the monitor shall be operational by January 1, 2017.

2. Public Comments

The EPA received comments from six states and multi-state representative groups and one citizen supporting the proposed revisions to the schedule for implementing near-road NO₂ monitors. For example, the Northeast States for Coordinated Air Use Management (NESCAUM) stated it supports "...the proposed changes to the NO₂ near-road monitoring network deployment schedule. The proposed phase-in and additional time is consistent with what the Clean Air Scientific Advisory Committee's (CASAC's) Ambient Air Monitoring and Methods Subcommittee recommended to EPA..." The National Association of Clean Air Agencies (NACAA) stated that it "...supports the Proposed Revision and commends EPA for responding to the recommendations of state and local agencies to implement a phased approach to deployment of the NO₂ near-roadway network via rulemaking."

The EPA received one comment from a public citizen against the proposed revisions to the implementation schedule. The citizen commenter who objected to the proposed revision stated

that the proposed action would lead to a trend in which the EPA will "...continuously revise the deadline, as there will always be funding issues in our current economy." The commenter goes on to note that postponing network deployment may also be misinterpreted to mean the agency is minimizing the priority for near-road NO₂ monitoring.

In response, the EPA notes that there will always be a need to balance monitoring objectives and requirements with available resources. Currently, there is a greater strain on federal, state, and local air monitoring resources than there has been during the recent past. This fact is articulated by multiple states and multi-state groups in their public comments on the proposed rulemaking, all of whom support the proposed revisions. For example, NACAA, which represents air pollution control agencies in 43 states, the District of Columbia, four territories, and 116 metropolitan areas, commented that "...state and local agencies need additional, adequate federal funding in order to move forward with new monitoring requirements and continue to operate and maintain existing monitoring networks...". NACAA goes on to state that installing and operating a new network such as the near-road NO₂ network "...requires the purchase of new equipment; installation of new sites; and additional staff, operation, and maintenance costs at a time when state and local agencies are already struggling with significant budget

and staffing shortfalls.”

The EPA has recognized the reality of state and local air agency funding and resource shortfalls. The EPA remains committed to near-road monitoring, but recognizes that the shift to near-road monitoring involves increased work and resource demands for site selection and implementation. The agency believes that the phased approach is the best solution to match the forecasted availability of federal funding, which will have to occur over multiple years, to allow the implementation of the required near-road NO₂ network. However, as noted above, while the EPA is considering the availability of resources in establishing these schedules, these monitoring requirements are not contingent on the future availability of federal resources.

3. Conclusions on Near-road NO₂ Monitoring Network

Implementation

The EPA has concluded, upon consideration of public comments, that the revisions to the dates that states must submit a plan for establishing all required near-road NO₂ monitors sites to the EPA and the dates by which those required near-road NO₂ monitors must be operational will be finalized as proposed. As such, near-road NO₂ monitors shall be established as follows:

- a) In each CBSA having 1,000,000 or more persons, one near-road NO₂ monitor shall be reflected in the state Annual Monitoring

Network Plan submitted July 1, 2013, and that monitor shall be operational by January 1, 2014.

b) In each CBSA required to have two near-road NO₂ monitors (i.e., any CBSA with a population of 2,500,000 or more persons, or any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts), a second near-road NO₂ monitor shall be reflected in the state Annual Monitoring Network Plan submitted July 1, 2014, and that monitor shall be operational by January 1, 2015.

c) In each CBSA having 500,000 or more persons (but less than 1,000,000), one near-road NO₂ monitor shall be reflected in the state Annual Monitoring Plan submitted July 1, 2016, and that monitor shall be operational by January 1, 2017.

The EPA estimates, under these new revisions, that 52 near-road NO₂ monitors would be operational by January 1, 2014, in CBSAs having 1,000,000 or more persons; an estimated 23 additional near-road NO₂ monitors would be operational by January 1, 2015, in any CBSA having 2,500,000 or more persons, or in those CBSAs with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts; and an estimated 51 additional near-road NO₂ sites would be operational by January 1, 2017, in those CBSAs having a population between 500,000 and 1,000,000 persons.

No changes are being made with regard to the implementation

timing requirements for area-wide monitoring and for monitoring to characterize NO₂ exposures for susceptible and vulnerable populations.

B. Change in Annual Monitoring Network Plan Approval Authority

We are finalizing revisions to regulatory language, as proposed (77 FR 64244), so that state and local air monitoring agencies shall submit annual NO₂ monitoring network plans to the EPA Regional Administrators for approval.

1. Proposed Change

The EPA proposed to amend the regulatory text in 40 CFR 58.10(a)(5) so that state and local air monitoring agencies are required to submit their NO₂ monitoring network plans to their respective EPA Regional Administrator instead of the EPA Administrator for approval. This change would make the NO₂ monitoring network plan submittals consistent with the requirements for submittal of Annual Monitoring Network Plans for ozone, carbon monoxide, sulfur dioxide, particulate matter, and lead to EPA Regional Administrators.

2. Public Comments

The EPA received comments from five state and multi-state representative groups and one citizen supporting the proposed revisions to shift the approval authority of state Annual Monitoring Network Plans from the EPA Administrator to the EPA Regional Administrators. For example, the Wisconsin Department

of Natural Resources supported this revision as this change will allow "...for NO₂ monitoring network plans to be incorporated into Annual Network Plans reducing the time and resources required to prepare these plans [independent of other pollutant plans]."

The EPA did not receive any comments against the proposed changes to NO₂ monitoring network plan approval authority.

3. Conclusions on Annual Monitoring Network Plan Approval Authority

The EPA has concluded, upon consideration of public comments, that the revisions to the regulatory language in 40 CFR 58.10(a)(5) shall be finalized as they were proposed. As such, states shall submit Annual Monitoring Network Plans for NO₂ monitoring to the EPA Regional Administrators for approval.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44

U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). The proposed amendments to revise ambient NO₂ monitoring requirements do not add any information collection requirements beyond those imposed by the existing NO₂ monitoring requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a

significant economic impact on a substantial number of small entities. This action will allow additional time for state and local air monitoring agencies to install and begin operating a subset of required NO₂ monitors and does not add any new requirements. Therefore, it will not present a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This action will allow additional time for state and local air monitoring agencies to install and begin operating a subset of required NO₂ monitors and does not add any new requirements. This action imposes no new enforceable duty on any state, local or tribal governments or the private sector. Furthermore, the expected costs associated with the monitoring requirements are not expected to exceed \$100 million in the aggregate for any year. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because it imposes no enforceable duty on any small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action will allow additional time for state and local air monitoring agencies to install and begin operating a subset of required NO₂ monitors and does not add any new requirements. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule imposes no requirements on tribal governments. This action will allow additional time for state and local air monitoring agencies to install and begin operating a subset of required NO₂ monitors and does not add any new requirements. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-

501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish or alter an environmental standard intended to mitigate health or safety risks, but merely allows additional time for state and local air monitoring agencies to install and begin operating a subset of required NO₂ monitors.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action will allow additional time for state and local air monitoring agencies to install and begin operating a subset of required NO₂ monitors and does not add any new requirements.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113 (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary

consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, this action is not subject to the NTTAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule will allow additional time for state and local air monitoring agencies to install and begin operating a subset of required NO₂ monitors and does not

add any new requirements or change any existing emission or ambient concentration standards.

K. Congressional Review Act

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. The EPA will submit a report containing this rule 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). This rule will be effective [insert date of publication in the FEDERAL REGISTER].

List of Subjects in 40 CFR Part 58

Environmental protection, Administrative practice and procedure,
Air pollution control, Intergovernmental relations.

Dated: March 7, 2013

Bob Perciasepe,
Acting Administrator.

For the reasons discussed in the preamble, the EPA amends 40 CFR part 58 to read as follows:

PART 58--AMBIENT AIR QUALITY SURVEILLANCE

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7403, 7410, 7601(a), 7611, and 7619.

Subpart B [AMENDED]

2. Section 58.10 is amended by revising paragraph (a)(5) and paragraph (b)(12) to read as follows:

§58.10 Annual monitoring network plan and periodic network assessment.

* * * * *

(a) * * *

(5)(i) A plan for establishing or identifying an area-wide NO₂ monitor, in accordance with the requirements of Appendix D, section 4.3.3 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2012. The plan shall provide for these required monitors to be operational by January 1, 2013.

(ii) A plan for establishing or identifying any NO₂ monitor intended to characterize vulnerable and susceptible populations, as required in Appendix D, section 4.3.4 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the

EPA Regional Administrator by July 1, 2012. The plan shall provide for these required monitors to be operational by January 1, 2013.

(iii) A plan for establishing a single near-road NO₂ monitor in CBSAs having 1,000,000 or more persons, in accordance with the requirements of Appendix D, section 4.3.2 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2013. The plan shall provide for these required monitors to be operational by January 1, 2014.

(iv) A plan for establishing a second near-road NO₂ monitor in any CBSA with a population of 2,500,000 or more persons, or a second monitor in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts, in accordance with the requirements of Appendix D, section 4.3.2 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2014. The plan shall provide for these required monitors to be operational by January 1, 2015.

(v) A plan for establishing a single near-road NO₂ monitor in all CBSAs having 500,000 or more persons, but less than 1,000,000, not already required by paragraph (a) (5) (iv) of this

section, in accordance with the requirements of Appendix D, section 4.3.2 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2016. The plan shall provide for these monitors to be operational by January 1, 2017.

* * * * *

(b) * * *

(12) The identification of required NO₂ monitors as near-road, area-wide, or vulnerable and susceptible population monitors in accordance with Appendix D, section 4.3 of this part.

* * * * *

3. Section 58.13 is amended by revising paragraph (c) to read as follows:

§58.13 Monitoring network completion.

* * * * *

(c) The NO₂ monitors required under Appendix D, section 4.3 of this part must be physically established and operating under all of the requirements of this part, including the requirements of appendices A, C, D, and E to this part, no later than:

(1) January 1, 2013, for area-wide NO₂ monitors required in Appendix D, section 4.3.3;

(2) January 1, 2013, for NO₂ monitors intended to characterize vulnerable and susceptible populations that are required in Appendix D, section 4.3.4;

(3) January 1, 2014, for an initial near-road NO₂ monitor in CBSAs having 1,000,000 million or more persons that is required in Appendix D, section 4.3.2;

(4) January 1, 2015, for a second near-road NO₂ monitor in CBSAs that have a population of 2,500,000 or more persons or a second monitor in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts that is required in Appendix D, section 4.3.2;

(5) January 1, 2017, for a near-road NO₂ monitor in CBSAs having 500,000 or more persons, but less than 1,000,000, not already required by paragraph (c)(4) of this section, that is required in Appendix D, section 4.3.2.

* * * * *

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