



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2013-0708, FRL-9914-90-Region 10]

Approval and Promulgation of Implementation Plans; Idaho:

Infrastructure Requirements for the 2010 Nitrogen Dioxide and 2010 Sulfur Dioxide

National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Idaho State Implementation Plan (SIP) as meeting the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for nitrogen dioxide (NO₂) on January 22, 2010, and sulfur dioxide (SO₂) on June 2, 2010. Whenever a new or revised NAAQS is promulgated, the CAA requires states to submit a plan for the implementation, maintenance and enforcement of such NAAQS. The plan is required to address basic program elements, including but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to implement, maintain and enforce the standards. These elements are referred to as infrastructure requirements.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA-R10-OAR-2013-0708. All documents in the docket are listed on the

<http://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 the disclosure of which 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 <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT-107, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that 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: Kristin Hall at: (206) 553-6357, hall.kristin@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us” or “our” is used, it is intended to refer to the EPA. Information is organized as follows:

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I. Background

Section 110 of the CAA specifies the general requirements for states to submit SIPs to implement, maintain and enforce the NAAQS and the EPA’s actions regarding approval of those SIPs. On September 16, 2013, Idaho made two SIP submissions to the EPA demonstrating that the Idaho SIP meets the infrastructure requirements of the CAA for the 2010 NO₂ and 2010 SO₂ NAAQS. Idaho’s submissions addressed the following CAA section 110(a)(2) elements for the

2010 NO₂ and 2010 SO₂ NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M). On April 17, 2014, we proposed approval of Idaho's September 16, 2013, submissions (79 FR 21669). An explanation of the CAA requirements and implementing regulations that are met by these SIP submissions, a detailed explanation of the submissions, and the EPA's reasons for the proposed action were provided in the notice of proposed rulemaking on April 17, 2014, and will not be restated here (79 FR 21669). The public comment period for our proposed action ended on May 19, 2014, and we received one anonymous comment via the www.regulations.gov website.

II. Response to Comment

Comment: "Due to the recent Supreme Court decision in *EME Homer City v. EPA*, the EPA should disapprove the State's submission with regard to Interstate Transport. This is because, due to the decision, a State's SIP is obligated to 'contain adequate provisions... prohibiting... any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will...contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any' [such primary or secondary] NAAQS. Even though the lower court's stay of CSAPR may still be in effect, the fact remains that a state is required to submit something that addresses Interstate Transport. Since the State of Idaho did not submit anything for Interstate Transport the EPA is left with no other option than to disapprove the state's submission since it does not address Interstate Transport. Since this decision was handed down after this rule was published the EPA should withdraw this proposed rule and re-propose with a disapproval of the Interstate Transport section."

Response: We disagree with the commenter. In this rulemaking the EPA is not taking

any final action with respect to the provisions in CAA section 110(a)(2)(D)(i)(I), which address emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. Idaho did not make a SIP submission to address the requirements of CAA section 110(a)(2)(D)(i)(I) and thus there is no such submission upon which the EPA could take action under CAA section 110(k). The EPA did not propose to take any action with respect to Idaho's obligations pursuant to CAA section 110(a)(2)(D)(i)(I) and is not, in this rulemaking action, taking any such action. Further, the EPA could not, as the commenter urges, act to disapprove a SIP that has not been submitted to the EPA.

The EPA also disagrees with the commenters' assertion that the EPA should disapprove Idaho's submissions because they do not address the requirements of CAA section 110(a)(2)(D)(i)(I). Section 110(k)(3) of the CAA authorizes the EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve the states' SIP submissions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that the EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. *See* S. Rep. No. 101-228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz v. U.S. EPA*, 832 F.2d 1071 (9th Cir. 1987)). The authority provided by the 1990 Amendments to act on particular plan revisions has been recognized by the Court of Appeals for the Ninth Circuit. *See* Hall v. U.S. EPA, 273 F.3d 1146 (9th Cir. August 29, 2001).

As such, the EPA interprets its authority under CAA section 110(k)(3) as affording the EPA the discretion to approve or conditionally approve individual elements of Idaho's

infrastructure SIP submissions for the 2010 NO₂ and 2010 SO₂ NAAQS, separate and apart from any action with respect to the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 NO₂ and 2010 SO₂ NAAQS. The EPA views discrete infrastructure SIP requirements, such as the requirements of CAA section 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements and interprets CAA section 110(k)(3) as allowing it to act on individual severable measures in a plan submission. In short, we believe we have discretion under CAA section 110(k) to act upon the various individual elements of the State's infrastructure SIP submittals, separately or together, as appropriate.

We note that the EPA is reviewing the recent Supreme Court case reversing and remanding the *EME Homer City* decision.¹ We are evaluating the opinion's impact on states' CAA section 110(a)(2)(D)(i)(I) obligations. We are working with state partners, including Idaho, to assess next steps to address interstate transport of pollution, including interstate transport SIP requirements for the 2010 NO₂ and 2010 SO₂ NAAQS.

II. Final Action

The EPA is approving the Idaho SIP as meeting the requirements of sections 110(a)(1) and (2) of the CAA for the 2010 NO₂ and 2010 SO₂ NAAQS. Specifically, we find that the Idaho SIP meets the following CAA section 110(a)(2) infrastructure elements for the 2010 NO₂ and 2010 SO₂ NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

This action is being taken under section 110 of the CAA.

III. Statutory and Executive Order Reviews

¹ On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued a decision vacating the Transport Rule, *see EME Homer City Generation, L.P. v. E.P.A.*, 696 F.3d 7 (D.C. Cir. 2012), and ordering the EPA to continue implementing CAIR in the interim. However, on April 29, 2014, the U.S. Supreme Court reversed and remanded the D.C. Circuit's ruling and upheld the EPA's approach in the Transport Rule. *EPA v. EME Homer City Generation, L.P.*, No. 12-1182, 572 U.S. ____ slip op. (2014).

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the 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 this action does not involve technical standards; and does not provide the 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 located in the State, and the 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. The 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

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

Dated: July 29, 2014.

Dennis J. McLerran,
Regional Administrator,
Region 10.

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 N - Idaho

2. Section 52.670 is amended in paragraph (e) in the table entitled “EPA-Approved Idaho Nonregulatory Provisions and Quasi-Regulatory Measures” by adding two entries at the end to read as follows:

§ 52.670 Identification of plan.

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(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
* * * * *				
Section 110(a)(2) Infrastructure Requirements for the 2010 NO ₂ NAAQS	State-wide	9/16/2013	[Insert <u>Federal Register</u> publication date] [Insert FR citation]	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L),

				and (M).
Section 110(a)(2) Infrastructure Requirements for the 2010 SO ₂ NAAQS	State-wide	9/16/2013	[Insert <u>Federal Register</u> publication date] [Insert FR citation]	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2014-18810 Filed 08/08/2014 at 8:45 am; Publication Date: 08/11/2014]