



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0689; FRL-9925-53-Region 4]

Approval and Promulgation of Implementation Plans; Alabama; Infrastructure

Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve in part and disapprove in part, the August 20, 2012, State Implementation Plan (SIP) submission, provided by the Alabama Department of Environmental Management (ADEM) for inclusion into the Alabama SIP. This final rulemaking pertains to the Clean Air Act (CAA or the Act) infrastructure requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS). 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 submission. ADEM certified that the Alabama SIP contains provisions that ensure the 2008 8-hour ozone NAAQS is implemented, enforced, and maintained in Alabama. With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting, interstate transport, and visibility protection requirements for which EPA is taking no action in this rulemaking, and provisions respecting state boards for which EPA is taking action to disapprove, EPA is taking final action to approve Alabama’s

infrastructure SIP submission provided to EPA on August 20, 2012, as satisfying the required infrastructure elements for the 2008 8-hour ozone NAAQS.

DATES: 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-2012-0689. 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 Air Regulatory Management Section (formerly the Regulatory Development Section), Air Planning and Implementation Branch (formerly the 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 a.m. to 4:30 p.m. excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, 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. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at ward.nacosta@epa.gov.

SUPPLEMENTARY INFORMATION:

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. Section 110(a) of the CAA generally requires states to make a SIP submission to meet applicable requirements in order 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. These SIP submissions are commonly referred to as “infrastructure” SIP submissions. Section 110(a) imposes the obligation upon states to make an infrastructure SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the infrastructure SIP for a new or revised NAAQS affect the content of the submission. The contents of such infrastructure SIP submissions may also vary depending upon what provisions the state’s existing SIP already contains. In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone 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 mentioned above, these

requirements include basic structural SIP elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements of section 110(a)(2) are summarized below and in 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).”¹

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources²
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas³

¹Two 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 due at the time the nonattainment area plan requirements are due pursuant to other provisions of the CAA for submission of SIP revisions specifically applicable for attainment planning purposes. 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 proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

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

- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

On January 21, 2015, EPA proposed to approve in part and disapprove in part, Alabama's August 20, 2012, 2008 8-hour ozone NAAQS infrastructure SIP submission with the exception of the PSD permitting requirements for major sources of sections 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), and the visibility requirements of section 110(a)(2)(J), which EPA will address in a separate action. EPA also proposed to disapprove Alabama's infrastructure submission for section 110(a)(2)(E)(ii) pertaining to state board requirements. *See* 80 FR 2851.

II. EPA's Response to Comments

EPA received one comment on its January 21, 2015, proposed action.

Comment: The commenter suggests that the EPA official who signed the proposed SIP approval /disapproval, the Deputy Regional Administrator for Region 4, was not delegated to sign SIP actions.

³ As mentioned above, this element is not relevant to today's rulemaking.

EPA's Response: The commenter is incorrect. Under CAA section 110(k) the EPA Administrator is tasked with acting on SIP submittals by approving or disapproving the submittal in whole or in part. It is the EPA's policy that, in order for other Agency management officials to act on behalf of the Administrator, the authority must be delegated officially. These official delegations are recorded in the "EPA Delegations Manual." Under EPA Delegation 1-21, Federal Register (1200 TN 543, 4/22/2002), the EPA Administrator has delegated the authority to sign and submit proposed actions on SIPs for publication in the Federal Register to the Assistant Administrator for Air and Radiation and to Regional Administrators. This delegation allows for this authority to be redelegated to the Deputies of the authorized officials. Based on the authority to redelegate provided in Delegation 1-21, EPA Region 4 redelegated the authority to sign and submit for publication in the Federal Register proposed SIPs to the Deputy Regional Administrator (*See* EPA Region 4 Delegation 1-21). Therefore, an appropriate EPA official, the Region 4 Deputy Regional Administrator, signed and submitted the proposal to approve in part and disapprove in part Alabama's August 20, 2012, infrastructure SIP submission. Of note, an earlier Delegation 7-10, Approval/Disapproval of State Implementation Plans (1200 TN 441, 5/6/97) did not allow redelegation of the authority to act on proposed SIP actions beyond the Regional Administrator. Since Delegation 1-21 post-dates 7-10 and specifically addresses the authority at issue, the authority to sign and submit proposed actions on SIPs for publication in the Federal Register, it is the applicable delegation. Delegation 1-21 does not change the limitation on redelegation beyond the Regional Administrator found in Delegation 7-10 for final actions on SIPs.

III. Final Action

With the exceptions described below, EPA is taking final action to approve ADEM's infrastructure SIP submission, submitted August 20, 2012, for the 2008 8-hour ozone NAAQS because it meets the above described infrastructure SIP requirements. EPA is disapproving in part section 110(a)(2)(E)(ii) of Alabama's infrastructure submission because Alabama's August 20, 2012, submission did not contain provisions to comply with the requirements of section 128 of the CAA for state boards. This final approval in part and disapproval in part, however, does not include the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), and the visibility requirements of section 110(a)(2)(J), which are being addressed by EPA in a separate action. With the exceptions noted above Alabama has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to section 110 of the CAA to ensure that the 2008 8-hour ozone NAAQS is implemented, enforced, and maintained in Alabama.

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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- 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.

The Congressional Review Act, 5 U.S.C. section 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 19, 2015.

Heather McTeer Toney

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 B—Alabama

2. Section 52.50(e) is amended by adding a new entry for “110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards” at the end of the table to read as follows:

§ 52.50 Identification of plan.

* * * * *

(e) * * *

EPA Approved Alabama 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 2008 8-Hour Ozone National Ambient Air Quality Standards | 7/17/2012 | [Insert date of publication in <u>Federal Register</u>] | [Insert citation of publication] | With the exception of PSD permitting requirements for major sources of sections 110(a)(2)(C) and (J); interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II), 110(a)(2)(E)(ii), and the visibility |

| | | | | |
|--|--|--|--|--------------------------------------|
| | | | | requirements of section 110(a)(2)(J) |
|--|--|--|--|--------------------------------------|

3. Section 52.53 is amended by adding paragraph (a), and adding and reserving paragraph (b), to read as follows:

§ 52.53 Approval status.

* * * * *

(a) *Disapproval.* Submittal from the State of Alabama, through the Alabama Department of Environmental Management (ADEM) on August 20, 2012, to address the Clean Air Act (CAA) section 110(a)(2)(E)(ii) for the 2008 8-hour Ozone National Ambient Air Quality Standards concerning state board requirements. EPA is disapproving section 110(a)(2)(E)(ii) of ADEM's submittal because the Alabama SIP lacks provisions respecting state boards per section 128 of the CAA for the 2008 8-hour Ozone National Ambient Air Quality Standards.

(b) [Reserved]

[FR Doc. 2015-07349 Filed: 4/1/2015 08:45 am; Publication Date: 4/2/2015]