



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2017-0151; FRL-9972-23-Region 1]

Air Plan Approval; Rhode Island; Infrastructure Requirement for the 2010 Sulfur Dioxide and 2010 Nitrogen Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision addresses the interstate transport requirements of the Clean Air Act (CAA), referred to as the good neighbor provision, with respect to the 2010 primary sulfur dioxide (SO₂) and 2010 primary nitrogen dioxide (NO₂) national ambient air quality standards (NAAQS). This action approves Rhode Island's demonstration that the State is meeting its obligations regarding the transport of SO₂ and NO₂ emissions into other states. This action is being taken under the Clean Air Act.

DATES: This rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2017-0151. All documents in the docket are listed on the

<http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., 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 at

<http://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England

Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact 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 legal holidays.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, (617) 918-1657; or by e-mail at dahl.donald@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On August 30, 2017 (82 FR 41197), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Rhode Island proposing to approve an October 15, 2015 SIP revision submitted by the State of Rhode Island. The specific requirements of this SIP element and the rationale for EPA's proposed actions on the State's submittal is explained in the NPR and will not be restated here.

II. Response to Comments

The EPA received two comments on the NPR. One comment stated our action is a good regulation as it makes communities conscious that our society's actions have consequences on the environment.

A second comment agreed that Rhode Island's plan will result in sufficient control of NO₂ and SO₂ emissions such that the plan will meet the State's interstate transport obligations with respect to those pollutants. The commenter also described a potential alternative approach for analyzing whether a state's emissions contribute to nonattainment of the NAAQS in another state, but noted that the alternative approach is not extremely different from Rhode Island's approach and that the success of Rhode Island's approach is very obvious. The commenter suggested that a demonstration could be based on analyzing only the emissions of all states surrounding a state that is not attaining the NAAQS. However, pursuant to section 110(a)(1) of the CAA, *all* states are required to submit SIPs meeting the applicable requirements of CAA section 110(a)(2) within three years after promulgation of a new or revised NAAQS, or within such shorter period as EPA may prescribe.¹ Therefore, EPA cannot limit the demonstration required to meet CAA section 110(a)(2)(D)(i)(I) to states adjacent to another state with a nonattainment area.

III. Final Action

EPA is approving the October 15, 2015 SIP submission from Rhode Island certifying that the State's current SIP is sufficient to meet the required infrastructure elements under CAA section 110(a)(2)(D)(i)(I) for the 2010 SO₂ and 2010 NO₂ NAAQS.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely

¹ This requirement applies to both primary and secondary NAAQS, but EPA's approval in this notice applies only to the 2010 primary NAAQS for SO₂ and NO₂ because EPA did not establish in 2010 a new secondary NAAQS for SO₂ and NO₂.

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 Clean Air Act; 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, 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication 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, Reporting and recordkeeping requirements, Sulfur oxides.

December 6, 2017.

Ken Moraff,
Acting Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 OO--Rhode Island

2. In §52.2070, the table in paragraph (e) is amended by adding the entry “Transport SIP for the 2010 NO₂ and SO₂ Standards” at the end of the table to read as follows:

§52.2070 Identification of plan.

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(e) * * *

Rhode Island Non Regulatory

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
**	*	*	*	**
Transport SIP for the 2010 NO ₂ and SO ₂ Standards	Statewide	10/15/2015	[insert date of publication in the Federal Register], [insert Federal Register citation]	

[FR Doc. 2017-27305 Filed: 12/18/2017 8:45 am; Publication Date: 12/19/2017]