



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2018-0269; FRL-9981-93-Region 1]

Air Plan Approval; Maine; Infrastructure Requirement for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision addresses the interstate transport requirements of the Clean Air Act (CAA) with respect to the 2010 primary nitrogen dioxide (NO₂) National Ambient Air Quality Standard (NAAQS). This action approves Maine's demonstration that the State is meeting its obligations regarding the interstate transport of NO₂ emissions into other states. This action is being taken under the CAA.

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-2018-0269. All documents in the docket are listed on the <https://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 <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 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: Patrick Bird, Office of Ecosystem Protection, 5 Post Office Square - Suite 100 (Mail Code OEP 05-2), Boston, MA 01209 - 3912, tel. (617) 918-1287, email bird.patrick@epa.gov.

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

Table of Contents

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

On May 25, 2018 (83 FR 24264), EPA published a Notice of Proposed Rulemaking (NPRM) regarding specific Clean Air Act requirements applicable to the State of Maine. In particular, the NPRM proposed approval of Maine's February 21, 2018, SIP submittal for the 2010 primary NO₂ NAAQS as it pertains to section 110(a)(2)(D)(i)(I) of the CAA.

Section 110(a)(2)(D)(i)(I) requires a state's SIP to include provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance of the NAAQS).

In the NPRM, EPA proposed to approve Maine's February 21, 2018, infrastructure SIP submittal for the 2010 primary NO₂ NAAQS, concluding Maine's SIP submittal adequately addresses prong 1 and prong 2 requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 primary NO₂ NAAQS. The rationale for EPA's proposed action is explained in the NPRM and will not be restated here.

II. Response to Comments

In response to the May 25, 2018 NPRM, we received a number of anonymous comments that address subjects outside the scope of our proposed action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the proposed action. Consequently, those comments are not germane to this rulemaking and require no further response.

EPA received one relevant comment that referred specifically to the proposed rulemaking on the Maine's infrastructure SIP submittal for the 2010 primary NO₂ NAAQS.

Comment: The commenter suggests that, under the Plain Writing Act of 2010, EPA should not have used the word “promulgated” in the NPRM for this action.

Response: The Plain Writing Act of 2010 (“PWA” or the “Act”), Pub. L. 111-274, 124 Stat. 2861, requires EPA to “use plain writing in every covered document of the agency that the agency issues or substantially revises.” See PWA section 4(b). The Act defines “plain writing” as “writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.” See PWA section 3(3). The Office of Management and Budget (“OMB”) published guidance¹ on the Act that encourages agencies to follow Federal Plain Language Guidelines available at www.plainlanguage.gov that recommend agencies avoid

¹ OMB, Final Guidance on Implementing the Plain Writing Act of 2010 (April 13, 2011), *available at* <https://plainlanguage.gov/law/>.

certain words, including “promulgate.” Neither the PWA nor the guidelines, however, bar its use.

In the NPRM, EPA used forms of “promulgate” twice as follows: “[o]n February 9, 2010, EPA *promulgated* a new 1-hour primary NAAQS for NO₂ at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations” and “states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after *promulgation* of a new or revised NAAQS” (emphasis added). The Clean Air Act specifically requires EPA to “promulgate” NAAQS, CAA section 109(a)(1)(B), and requires states to submit infrastructure SIPs to EPA within three years after the “promulgation” of a NAAQS, CAA section 110(a)(1). EPA agrees that it can sometimes be clearer to avoid words like “promulgate,” but EPA appropriately used “promulgated” and “promulgation” in the NPR to refer specifically to these formal CAA requirements. In any event, the comment does not suggest that the commenter misunderstood EPA’s proposed action due to the use of these words. *See* PWA section 2. Nor does the commenter state that EPA should disapprove Maine’s submittal. Therefore, we are approving the SIP submittal as proposed.

III. Final Action

EPA is approving Maine’s February 21, 2018, SIP revision addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 primary NO₂ NAAQS. EPA is taking final action to approve this SIP submittal because Maine’s SIP includes adequate provisions to prevent emissions sources within the State from significantly contributing to nonattainment or interfering with maintenance of this standard in any other state.

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 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);
- This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- 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. 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, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 6, 2018.

Alexandra Dunn,
Regional Administrator,
EPA Region 1.

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 U—Maine

2. Section 52.1020(e) is amended by adding an entry titled “Interstate Transport SIP to meet Infrastructure Requirements for the 2010 1-hour NO₂ NAAQS” at the end of the table to read as follows:

§ 52.1020 Identification of plan.

* * * * *
(e) *Nonregulatory.*

MAINE NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date ³	Explanations
**	*	*	*	**
Interstate Transport SIP to meet Infrastructure Requirements for the 2010 1-hour NO ₂ NAAQS	Statewide	2/21/2018	[Insert date of publication date in the Federal Register], [Insert Federal Register citation]	This approval addresses Prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) only.

³ In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2018-17248 Filed: 8/10/2018 8:45 am; Publication Date: 8/13/2018]