



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2008-0108; FRL-10001-37-Region 1]

Air Plan Approval; Massachusetts; Transport State Implementation Plans for the 1997 and 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts that address the interstate transport of air pollution requirements of the Clean Air Act for the 1997 and 2008 ozone national ambient air quality standards (NAAQS) (i.e., ozone transport SIPs). The intended effect of this action is to approve the two transport SIPs as revisions to the Massachusetts SIP.

This action is being taken in accordance with 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-2008-0108. 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, Air and Radiation Division, 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: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109 - 3912, tel. (617) 918-1684, email simcox.alison@epa.gov.

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

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I. Background

On August 14, 2019 (84 FR 40344), EPA published a Notice of Proposed Rulemaking (NPRM) for the Commonwealth of Massachusetts.

The NPRM proposed approval of SIP revisions that address the interstate transport of air pollution requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the 1997, 2008, and 2015 ozone national ambient air quality standards (NAAQS) (i.e., ozone transport SIPs). The formal SIP revisions were submitted by Massachusetts on January 31, 2008; February 9, 2018; and September 27, 2018. In today's action, we are approving the transport SIPs for the 1997 and 2008 ozone NAAQS. We will take final action on the transport SIP for the 2015 ozone NAAQS at a later date.

The rationale for EPA's proposed action is explained in the NPRM and will not be restated here. One public comment was received on the NPRM.

II. Response to Comments

EPA received one comment during the comment period stating that EPA cannot “rely on a rule that a court has now vacated,” referring to the recent ruling by the United States Court of Appeals for the District of Columbia Circuit in *Wisconsin v. EPA*, No. 16-1406, 2019 WL 4383259 (D.C. Cir. Sept. 13, 2019), on EPA’s Cross State Air Pollution Rule Update for the 2008 Ozone NAAQS (“CSAPR Update Rule”), 81 FR 74504 (October 26, 2016). As an initial matter, the commenter is incorrect; the court remanded the CSAPR Update Rule to EPA but did not vacate it. *Wisconsin*, 2019 WL 4383259, at *26. In any event, our proposed approval of the Commonwealth’s Transport SIP for the 1997 ozone NAAQS did not rely on the CSAPR Update Rule. Thus, the court’s ruling in *Wisconsin* does not affect our approval of Massachusetts’ Transport SIP for the 1997 ozone NAAQS.

With respect to the 2008 ozone NAAQS, our proposed approval relied in part on EPA’s finding in the CSAPR Update Rule that emissions from Massachusetts do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any downwind state, *see* 84 FR at 40346-47 (citing 81 FR at 74506). However, no party challenged that aspect of the CSAPR Update in *Wisconsin* and nothing in the *Wisconsin* court’s opinion overturned that finding or called it into doubt. Consequently, *Wisconsin v. EPA* likewise does not bar approval of the Commonwealth’s Transport SIP for the 2008 ozone NAAQS.

III. Final Action

EPA is approving transport SIPs that were submitted to address interstate transport requirements for CAA section 110(a)(2)(D)(i)(I) for the 1997 and 2008 ozone NAAQS as a revision to the Massachusetts SIP.

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);
- 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: October 22, 2019.

Dennis Deziel,
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.

2. Section 52.1120 is amended in the table in paragraph (e) by adding entries for “Interstate transport requirements of CAA for 1997 Ozone NAAQS,” and “Interstate transport requirements of CAA for 2008 Ozone NAAQS” at the end of the table to read as follows;

§ 52.1120 Identification of plan

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(e) * * *

Massachusetts Non Regulatory

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date ³	Explanations
**	*	*	*	**
Interstate transport requirements of CAA for 1997 Ozone NAAQS	Statewide	January 31, 2008	[Insert date of publication in the <u>Federal Register</u>] [Insert <u>Federal Register</u> citation]	Approved with respect to requirements for CAA section 110(a)(2)(D)(i)(I)
Interstate transport requirements of CAA for 2008 Ozone NAAQS	Statewide	February 9, 2018	[Insert date of publication in the <u>Federal Register</u>] [Insert <u>Federal Register</u> citation]	Approved with respect to requirements for CAA section 110(a)(2)(D)(i)(I)

³ To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** document cited in this column for the particular provision.
[FR Doc. 2019-23593 Filed: 11/5/2019 8:45 am; Publication Date: 11/6/2019]