



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0503; FRL-10006-32-Region 4]

Air Plan Approval; GA and NC: Infrastructure Requirements

for the 2015 8-hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of the Georgia and North Carolina State Implementation Plan (SIP) submissions provided on September 24, 2018, and September 27, 2018, respectively. The submissions pertain to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP submission to establish that state's implementation plan meets infrastructure requirements for the implementation, maintenance, and enforcement of each such NAAQS. Georgia and North Carolina each made the required SIP submissions to assure that their SIPs contain provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in their State. EPA has in this action determined that the Georgia and North Carolina infrastructure SIP submissions satisfy certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: This rule is effective **[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-R04-OAR-2019-0503. All documents in the docket are listed on the 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 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, Air Planning and Implementation Branch, Air and Radiation 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: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Lakeman can be reached via telephone at (404) 562-9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On October 1, 2015, EPA promulgated revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section

110(a)(1) of the CAA, states are required to make a SIP submission meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP submission is commonly referred to as an “infrastructure SIP.” EPA required states to make these infrastructure SIP submissions for the 2015 8-hour ozone NAAQS no later than October 1, 2018.¹

This action is approving Georgia’s September 24, 2018, SIP submission provided to EPA through the Georgia Environmental Protection Division (GA EPD), and North Carolina’s September 27, 2018,² SIP submission provided to EPA through the North Carolina Department of Environmental Quality (NC DEQ) with respect to most of the applicable requirements of the 2015 8-hour ozone NAAQS. In this action, EPA is not acting upon the submissions with respect to the interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to contribution to nonattainment or interference with maintenance in other states, and the prevention of significant deterioration (PSD) provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J). With respect to the interstate transport provisions of section 110(a)(2)(D)(i)(I) and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), EPA is addressing these provisions in separate rulemaking actions.

¹ In these infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

² The September 27, 2018, SIP submission provided by NC DEQ’s Division of Air Quality (DAQ) was received by EPA on October 10, 2018.

In a notice of proposed rulemaking (NPRM) published on December 30, 2019 (84 FR 71866), EPA proposed to approve Georgia and North Carolina SIP submissions provided on September 24, 2018, and September 27, 2018, respectively, for the applicable infrastructure SIP requirements of the 2015 8-hour ozone NAAQS. The NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before January 29, 2020.

II. Response to Comment

EPA received two comments on the NPRM, one in support of the action and one opposed to the action. Both comments are included in the docket for this final rule, and the adverse comment is addressed below.

Comment: The Commenter states that “EPA fails to explain whether either state has submitted an approved Emergency Episode plan pursuant to Subpart H under section 110(a)(2)(G). Both states have at least one area that is classified as Priority 1 for Hydrocarbons under Part 52.571 or 52.1771, as they apply to each state. EPA must explain where these emergency episode plans are in each states’ SIPs or disapprove the States’ section 110(a)(2)(G) submission.”

Response: EPA disagrees with the commenter. Section 110(a)(2)(G) requires SIPs to “provide for authority comparable to that in section 7603 [303] of this title and adequate contingency plans to implement such authority.” Section 303 of the CAA authorizes the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an “imminent and substantial endangerment to public health or welfare, or the environment.” EPA’s September 13, 2013 “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” explains that EPA

interprets section 110(a)(2)(G) to impose two requirements for purposes of an infrastructure SIP submission.³ First, a state's submission should identify the relevant statutes or regulations that provide the air agency or official with authority comparable to that of the EPA Administrator under section 303.^{4,5} Second, the state's implementation plan is required to include an adequate contingency plan to meet the requirements of 40 CFR part 51, subpart H.

The Commenter expresses concern about the states' compliance with the second 110(a)(2)(G) requirement - an adequate contingency plan to meet the requirements of 40 CFR part 51, subpart H. Specifically, the Commenter questions whether the Georgia and North Carolina SIPs contain the required subpart H emergency episode plan and contends that EPA failed to explain whether either state has such a plan. In the NPRM at 84 FR 71872, EPA cited to the emergency episodes and contingency plan in Georgia's existing SIP, which is Air Quality Control Rule 391-3-1-.04, "Air Quality Control Episodes." This rule authorizes the GA EPD Director to proclaim an air pollution alert, warning, or emergency; and authorizes the Director to require the owner, operator or lessee of any source to prepare, submit, and implement a plan to reduce air contaminants when notified of an air pollution alert, warning, or emergency. Similarly, EPA explained in the NPRM at 84 FR 71872, that North Carolina's existing SIP contains an emergency episode and contingency plan in 15A NCAC 2D .0300, "Air Pollution Emergencies." This rule authorizes the NC DEQ Director to proclaim an air pollution alert, warning, or emergency; requires larger source to develop actions plans; lists other abatement

³ See "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," September 13, 2013, p. 47.

⁴ EPA explains that the best practice is for the statutory or regulatory provisions that provide authority comparable to section 303 to be included in the SIP, but provides that an air agency may choose not to include such provision in the SIP, in which case the submission should provide a reference or citation to the authority provisions, along with a narrative explanation of how they meet the requirements of this element.

⁵ A discussion of how Georgia and North Carolina have authority comparable to CAA section 303 is found in the NPRM at 84 FR 71872.

measures; and provides that such plans and measures must be implemented when an alert, warning or emergency has been declared.

EPA notes that Georgia Air Quality Control Rule 391-3-1-.04, “Air Quality Control Episodes,” and North Carolina 15A NCAC 2D .0300, “Air Pollution Emergencies” are already approved into each state’s respective SIP.⁶ Thus, contrary to Commenter’s assertion, EPA identified each state’s SIP-approved emergency episode plan in the NPRM. The Commenter did not provide any information to suggest that either Georgia’s or North Carolina’s existing SIP-approved rules were inadequate or otherwise suggest that these states lacked authority comparable to that in CAA section 303.

III. Final Action

With the exception of interstate transport provisions of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 and 2) pertaining to contribution to nonattainment or interference with maintenance in other states, and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), EPA is approving Georgia’s and North Carolina’s September 24, 2018, and September 27, 2018, SIP submissions for the 2015 8-hour ozone NAAQS. EPA is approving Georgia’s and North Carolina’s infrastructure SIP submissions for certain requirements related to the 2015 8-hour ozone NAAQS because the submissions are consistent with section 110 of the CAA.

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. *See* 42 U.S.C. 7410(k); 40

⁶ In footnote 3 of the NPRM (84 FR 71867), EPA explained that regulations cited to in the NPRM as Georgia’s Air Quality Control Rule and North Carolina’s NCAC have been approved into the SIP, unless otherwise indicated.

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. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Are 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
- Do 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 SIPs subject to these actions are 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. 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 **[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: February 27, 2020.

Mary S. Walker,
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 L – Georgia

2. Section 52.570, is amended in paragraph (e) by adding an entry for “110(a)(1) and (2)

Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS” at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA 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 2015 8-Hour Ozone NAAQS.	Georgia	9/24/2018	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	With the exception of 110(a)(2)(D)(i)(I) (prongs 1 and 2) and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(I) (prong 3), and 110(a)(2)(J)

Subpart II— North Carolina

3. Section 52.1770, is amended in paragraph (e) by adding an entry for “110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS” at the end of the table to read as follows:

§ 52.1770 Identification of plan.

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(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	FEDERAL REGISTER citation	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS.	9/27/2018	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication].	With the exception of 110(a)(2)(D)(i)(I) (prongs 1 and 2) and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J)

[FR Doc. 2020-04855 Filed: 3/10/2020 8:45 am; Publication Date: 3/11/2020]