



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2018-0647; FRL-10006-15-Region 2]

Approval of Air Quality Implementation Plans; New York; Infrastructure SIP Requirements for the 2012 PM_{2.5} NAAQS; Interstate Transport Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of the New York State Implementation Plan (SIP) submittal regarding infrastructure requirements for interstate transport of pollution with respect to the 2012 annual fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) or standard.

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-2018-0647 at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public

comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007-1866, at (212) 637-3702, or by email at fradkin.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of the SIP Revision and the EPA’s Analysis
- III. The EPA’s Proposed Action
- IV. Statutory and Executive Order Reviews

I. Background

A. General

The EPA is proposing to approve elements of the 2012 PM_{2.5} infrastructure SIP submission from the State of New York, received on November 30, 2016. Specifically, this rulemaking proposes to approve the portion of the submission addressing the interstate transport provisions for the 2012 PM_{2.5} NAAQS under Clean Air Act (CAA) section 110(a)(2)(D)(i)(I), otherwise known as the “good neighbor” provision.

On December 14, 2012 (78 FR 3086), the EPA promulgated a revised primary NAAQS for PM_{2.5} for the annual standard. The revised standard was set at the level of 12 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) calculated as an annual average, which is averaged over a three-year period.

B. EPA’s Infrastructure requirements

Whenever the EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an

“infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.¹ Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.² The EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

C. Interstate Pollution Transport Requirements

Section 110(a)(2)(D)(i)(I) of the CAA requires a state’s SIP to include adequate provisions prohibiting any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. The EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance) or jointly as the “good neighbor” provision of the CAA. On March 17, 2016, the EPA issued a memorandum providing information on the development and

¹ The EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including the EPA’s prior action on New York’s infrastructure SIPs submitted on April 4, 2013 for 2008 Ozone, October 3, 2013 for 2010 SO₂, and November 30, 2016 for 2012 annual PM_{2.5} NAAQS that addressed the portion of the submissions not germane to transport (84 FR 54502, October 10, 2019).

² See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. Thomas*, 902 F.3d 971 (Aug. 30, 2018).

review of SIPs that address CAA section 110(a)(2)(D)(i)(I) for the 2012 PM_{2.5} NAAQS (2016 guidance memorandum).³

II. Summary of the SIP Revision and the EPA’s Analysis

On November 30, 2016, New York submitted a revision to its SIP to satisfy the infrastructure requirements of section 110(a)(2) of the CAA for the 2012 PM_{2.5} annual standard, including the interstate transport requirements of section 110(a)(2)(D)(i)(I).

This proposed rulemaking action addresses the portion of New York’s infrastructure submittal for the 2012 PM_{2.5} annual NAAQS that pertains to interstate transport, CAA section 110(a)(2)(D)(i)(I) (referred to as prongs 1 and 2). On October 10, 2019 (84 FR 54502) the EPA acted on all other applicable elements of section 110(a)(2) for the 2012 PM_{2.5} NAAQS, including 110(a)(2)(D)(i)(II) (prong 3), which relates to the prevention of significant deterioration (PSD), and 110(a)(2)(D)(i)(II) (prong 4), which relates to visibility.

The portion of New York’s November 30, 2016 SIP submittal addressing the “good neighbor” provision indicates that New York considers CAA 110(a)(2)(D)(i)(I) to be adequately addressed based on the State’s contribution analysis to determine whether emissions from New York State contribute significantly to nonattainment or interference with maintenance in another state.

In their analysis, New York considered the areas that were designated⁴ as nonattainment for

³ Information on the Interstate Transport “Good Neighbor” Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act section 110(a)(2)(D)(i)(I)” (March 17, 2016). The document is available at https://www.epa.gov/sites/production/files/2016-08/documents/good-neighbor-memo_implementation.pdf . A copy is included in the docket for this rulemaking.

⁴ Air Quality Designations for the 2012 Primary Annual Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS) was published in the Federal Register at 80 FR 2206 (January 15, 2015). Additional Air Quality Designations and Technical Amendment to Correct Errors in Air Quality Designations was published at 80 FR 18535 (April 7, 2015).

the 2012 PM_{2.5} NAAQS (i.e., California, Idaho, Ohio, and Pennsylvania), and the violating air monitors (i.e., in Cuyahoga County, Ohio and Allegheny County, Pennsylvania) located in states that New York was linked to as contributing by the 2012 EPA modeling performed for the Cross-State Air Pollution Rule (CSAPR).⁵ New York performed air modeling (i.e., Community Multiscale Air Quality (CMAQ) modeling) to determine projected annual PM_{2.5} Design Values (DVs) for year 2018, which included the violating monitors in both Cuyahoga County, Ohio and Allegheny County, Pennsylvania. Based on New York's modeling, which did not show violations of the NAAQS at either location in 2018, New York concluded that the "good neighbor" provision of the CAA was adequately addressed. The EPA notes that New York provided the results of its CMAQ modeling but did not include information necessary for the EPA to fully evaluate New York's modeling, including emissions and meteorological data used, and other relevant information to determine the adequacy of New York's modeling analysis.

Since November 30, 2016, the date of New York's SIP submission, actual 2018 annual PM_{2.5} DVs show that there are no longer violating monitors in Cuyahoga County, Ohio, but that monitors in Allegheny County, Pennsylvania continue to show violations.

In the submission, New York noted that in both the State of Pennsylvania's recommendation to the EPA for the 2012 PM_{2.5} NAAQS, and the EPA's Technical Support Document (TSD)⁶ for the 2012 PM_{2.5} NAAQS designations, PM_{2.5} exceedances in Allegheny County were identified as a local issue and were not linked to out of state emissions from New York. The EPA specifically limited the nonattainment area to Allegheny County only, even though an adjacent county

⁵ Final June Revisions Rule Significant Contribution Assessment TSD, Docket ID No. EPA-HQ-OAR-2009-0491, June 2012. The document is available at <https://www.epa.gov/sites/production/files/2017-06/documents/epa-hq-oar-2009-0491-4990.pdf>

⁶ New York included EPA's TSD for the 2012 PM_{2.5} NAAQS designations in Appendix B of the November 30, 2016 SIP submittal.

(Cambria County) also contained a violating monitor at the time of the designation.

New York's submittal also described existing SIP-approved measures that apply to PM_{2.5} sources located within New York State.

Based on our analysis, the EPA agrees with New York's general conclusion that the existing New York SIP is adequate to prevent sources located in New York State from significantly contributing to nonattainment or interfering with maintenance in another state with respect to the 2012 annual PM_{2.5} NAAQS. As discussed in more detail in the TSD for this rulemaking action, the EPA identified potential downwind nonattainment and maintenance receptors, and then evaluated them to determine if New York's emissions could potentially contribute to nonattainment and maintenance problems in 2021, the attainment year for moderate PM_{2.5} nonattainment areas. Specifically, the EPA analysis identified the following areas as potential nonattainment and maintenance areas: (i) 17 potential receptors in California; (ii) one potential receptor in Shoshone County, Idaho, and (iii) one potential receptor in Allegheny County, Pennsylvania. For the potential receptors in California and Idaho, based on the EPA's evaluation of the distance between New York and the potential receptors, as well as wind direction, and other supporting information, the EPA proposes to conclude that New York's emissions do not significantly impact the potential receptors in California or Idaho. For the potential receptor in Allegheny County, Pennsylvania, as discussed in greater detail in the TSD for this action, the EPA expects the air quality to improve to the point where the monitor will not be a nonattainment or maintenance receptor by 2021 and is therefore unlikely to be a receptor for purposes of interstate transport.

Based on our analysis, the EPA agrees with New York's conclusion that the existing New York SIP is adequate to prevent sources in New York from significantly contributing to

nonattainment or interfering with maintenance in another state with respect to the 2012 annual PM_{2.5} NAAQS. The EPA believes there is sufficient information to conclude that New York's SIP contains adequate provisions without further consideration of New York's modeling that was provided in their November 30, 2016 submittal.

A detailed summary of the EPA's review and rationale for the proposed approval of this SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) for the 2012 annual PM_{2.5} NAAQS may be found in the TSD.

III. The EPA's Proposed Action

The EPA is proposing to approve the portions of New York's November 30, 2016 SIP submittal addressing interstate transport for the 2012 annual PM_{2.5} NAAQS as meeting the requirements in section 110(a)(2)(D)(i)(I) of the CAA. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

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 CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the 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 proposed 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 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted 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 this action does not involve technical standards; 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, this proposed rule, addressing New York's interstate transport requirements for the 2012 annual PM_{2.5} NAAQS 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: April 19, 2020.

Peter Lopez,
Regional Administrator,
Region 2.

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