



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2020-0057; FRL-10009-47-Region 1]

## **Air Plan Approval; Vermont; Infrastructure State Implementation Plan Requirements for the 2015 Ozone 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 Vermont that addresses the infrastructure requirements of the Clean Air Act (CAA or Act)—including the interstate transport provisions—for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state’s air-quality management program, including provisions prohibiting emissions that will have certain adverse air-quality effects in other states, are adequate to meet the state’s responsibilities under the CAA. EPA is also approving the State of Vermont Executive Order (EO) 19-17, *Executive Code of Ethics*, which Vermont submitted with its infrastructure submission for the 2015 ozone NAAQS to be added to the SIP. Because EO 19-17 supersedes and replaces EO 09-11, EPA is also removing EO 09-11 from the Vermont 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-2020-0057. 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 and facility closures due to COVID-19.

**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](mailto: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 and Purpose

On April 1, 2020 (85 FR 18160), EPA published a notice of proposed rulemaking (NPRM) for the State of Vermont.

The NPRM proposed approval of a Vermont SIP revision that addresses the infrastructure requirements of the Clean Air Act (CAA or Act)—including the interstate transport provisions—for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The NPRM also proposed approval of State of Vermont Executive Order (EO) 19-17, *Executive Code of Ethics*, which the State submitted with its infrastructure submission. The formal SIP revision was submitted by Vermont on November 19, 2019. The rationale for EPA’s proposed action is given in the NPRM and will not be restated here. EPA received no public comments on the NPRM.

### II. Final Action

EPA is approving Vermont’s November 19, 2019, infrastructure SIP submission for the 2015 ozone NAAQS)—including the “Good Neighbor” or “transport” provisions—as a revision to the Vermont SIP. In addition, EPA is approving, and incorporating into the Vermont SIP, the following executive order:

State of Vermont Executive Order No. 19-17, *Executive Code of Ethics*, effective December 4, 2017.

EPA is also removing State of Vermont Executive Order No. 09-11, *Executive Code of Ethics*, from the Vermont SIP because this has been superseded and replaced by Executive Order No. 19-17.

### **III. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Vermont executive order described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

### **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:

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

- 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).

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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 6, 2020.

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.*

**Subpart UU - Vermont**

2. Amend § 52.2370:

a. In the table in paragraph (c) by removing the entry “Vermont Executive Order 09-11” and adding the entry “Vermont Executive Order 19-17” at the end of the Statutes and Executive Orders section of the table; and

b. In the table in paragraph (e) by adding the entry “Submittal to meet Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS” at the end of the table.

The additions read as follows:

**§ 52.2370 Identification of plan.**

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(c) \* \* \*

**EPA-Approved Vermont Regulations**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanations</b>
**	*	*	*	**
Statutes and Executive Orders				
**	*	*	*	**

Vermont Executive Order 19-17	Executive Code of Ethics	12/4/2017	<b>[Insert date of publication in the <u>Federal Register</u>]</b>  <b>[Insert <u>Federal Register</u> citation]</b>	Prohibits all Vermont executive branch appointees (including the ANR Secretary) from taking “any action in any matter in which he or she has either a Conflict of Interest or the appearance of a Conflict of Interest, until the Conflict is resolved.” Submitted and approved as part of 2015 Ozone infrastructure SIP.
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(e) \* \* \*

**Vermont Non-Regulatory**

<b>Name of non-regulatory SIP provision</b>	<b>Applicable geographic or nonattainment area</b>	<b>State submittal date/effective date</b>	<b>EPA approved date</b>	<b>Explanations</b>
**	*	*	*	**
Submittal to meet Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS	Statewide	11/19/2019	<b>[Insert date of publication in the <u>Federal Register</u>]</b>  <b>[Insert <u>Federal Register</u> citation]</b>	This submittal is approved with respect to the following CAA elements or portions thereof: 110(a)(2) (A), (B), (C), (D), (E)(1), E(2), (F), (G), (H), (J1), (J2), (J3), (K), (L), and (M). This approval includes the Transport SIP for the 2015 Ozone NAAQS, which shows that Vermont does not significantly contribute to ozone nonattainment or maintenance in any other state.