



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2019-0573, FRL-10011-61-Region 10]

Air Plan Approval; WA; Infrastructure Requirements for the 2010 Sulfur Dioxide and 2015 Ozone Standards; Availability of Supplemental Information and Reopening of the Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; availability of supplemental information and reopening of the comment period.

SUMMARY: Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, the Clean Air Act (CAA) requires states to submit a plan for the implementation, maintenance, and enforcement of the standard, commonly referred to as infrastructure requirements. On May 26, 2020, the Environmental Protection Agency (EPA) published a notice of proposed rulemaking to approve the Washington State Implementation Plan as meeting specific infrastructure requirements for the 2010 sulfur dioxide (SO₂) and 2015 ozone NAAQS. Due to an administrative error, the technical support document was left out of the docket during the initial comment period from May 26, 2020 to June 25, 2020. Thus, the EPA is providing an additional 30 days for public comment on the proposed action. We are also supplementing the docket with additional supporting materials in response to a comment on our proposed approval.

DATES: 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 No. EPA-R10-OAR-2019-0573 at <https://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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue – Suite 155, Seattle, WA 98101, at (206) 553-0256, or hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA. This supplementary information section is arranged as follows:

I. What action is the EPA taking?

On May 26, 2020, at 85 FR 31421, the EPA proposed to approve the Washington State Implementation Plan (SIP) as meeting certain infrastructure requirements for the 2010 SO₂ and 2015 ozone NAAQS, specifically CAA section 110(a)(2)(A), (B), (C) (except for those provisions covered by the PSD FIP), (D)(i)(II) (except for those provisions covered by the PSD and regional haze FIPs), (D)(ii) (except for those provisions covered by the PSD FIP), (E), (F),

(G), (H), (J) (except for those provisions covered by the PSD FIP), (K), (L), and (M). We received three comments on the original proposal. Two of the comments noted that the EPA neglected to include the technical support document (TSD) in the docket explaining the EPA's rationale for the proposed approval. Due to this administrative error, the EPA is providing an additional 30 days for public comment on the proposed action.

A third comment suggested that insufficient information was provided in the docket to allow the reviewer to fully evaluate the EPA's rationale in proposing to approve the Washington SIP as meeting the requirements of CAA section 110(a)(2)(E) regarding assurances of adequate resources. Section 110(a)(2)(E) requires states to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, that the state comply with the requirements of CAA section 128 respecting state boards and conflict of interest, and necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

While most of the state's SIP submittal narrative and the EPA's analysis focused on the statutory and regulatory authorities necessary to meet CAA section 110(a)(2)(E), the EPA's TSD noted that "Washington receives CAA sections 103 and 105 grant funds from the EPA and provides state matching funds necessary to carry out SIP requirements" as part of our basis to propose approval of this element. We are supplementing the docket with the source materials that support the analysis in the TSD. Specifically, we are including the "Federal Fiscal Year 2020-2021 Performance Partnership Grant" (PPG) award and associated documents. The PPG details Federal and state funding for the air program by budget category under the CAA section 105 grant program, reporting requirements, and, critically, the level of state matching funds. We

are also including the “State Fiscal Years 2020-2021 Environmental Performance Partnership Agreement” (PPA) that serves as a joint workplan the PPG and provides specific outcome measures and outputs in determining progress. Lastly, we are including our most recent annual evaluation of the state air program under the PPG/PPA which concluded that, “Ecology is meeting all air-related PPA objectives and no issues were identified that would impact the Performance Partnership Grant (PPG).” We note that most of these materials are already publicly available at <https://sgita.epa.gov/apex/sgitapub/f?p=SGITAPUB:Home:>.

Aside from supplementing the docket with the inadvertently omitted TSD and other supporting materials described previously, we are making no changes to the proposed action in our original May 26, 2020 document. The EPA is providing an additional 30 days for public review and comment on the proposed action. We will address all comments received on the original proposal and on this supplemental action in our final action.

II. Statutory and Executive Orders Review

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 proposed 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 application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the 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 SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the 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. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated July 15, 2019.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 12, 2020.

Christopher Hladick,
Regional Administrator,
Region 10.

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