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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0506; FRL-9895-01-R4]

Alabama; Rescission of the Finding of Failure to Submit a

State Implementation Plan for Interstate Transport

for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action; rescission of action.

SUMMARY: The Environmental Protection Agency (EPA) is rescinding its June 22, 2022, final rule finding that the State of Alabama failed to submit a complete infrastructure State Implementation Plan (SIP) revision to satisfy the good neighbor interstate transport requirements of the Clean Air Act (CAA or Act) with respect to the 2015 8-hour ozone national ambient air quality standards (NAAQS or standards).

DATES: Effective date of this action is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No.

EPA-R04-OAR-2022-0506. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e.,

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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 can either be retrieved electronically via 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: Evan Adams of 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. Mr. Adams can be reached by telephone at (404) 562-9009, or via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

A. Interstate Transport SIPs

CAA section 110(a) imposes an obligation upon states to submit SIP revisions that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of that NAAQS. CAA section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. EPA refers

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to this type of SIP as an “infrastructure” SIP because it ensures that states can implement, maintain, and enforce the new or revised air standards. Within these requirements, CAA section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP for this sub-section is referred to as an “interstate transport SIP.” CAA section 110(a)(2)(D)(i)(I) requires that such a plan contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in any other state or interfere with maintenance of the NAAQS in any other state. This action concerns SIP submissions from the State of Alabama regarding these requirements, also called collectively the “good neighbor” provision.

Pursuant to CAA section 110(k)(1)(B), EPA must determine within 60 days of receiving a SIP revision, but no later than six months after the date by which a state is required to submit a SIP revision, whether a state has made a submission that meets the minimum completeness criteria established pursuant to CAA section 110(k)(1)(A). These criteria are set forth at 40 CFR part 51, appendix V. EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria as a “finding of failure to submit.” If EPA finds a state has failed to submit a SIP revision to meet its statutory obligation to address CAA section 110(a)(2)(D)(i)(I), then pursuant to CAA section 110(c)(1), EPA has not only the authority, but the obligation, to promulgate a federal implementation plan (FIP) within two years to address the CAA requirement.

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B. Background on the 2015 Ozone NAAQS, Alabama's SIP Revisions, Incompleteness Determination, and Finding of Failure to Submit

On October 1, 2015, EPA promulgated a revision to the 8-hour primary and secondary ozone NAAQS of 70 parts per billion (ppb), which is met when the 3-year average of the annual fourth highest daily maximum 8-hour concentration does not exceed 70 ppb.¹ Pursuant to the 3-year period provided in CAA section 110(a)(1), states' infrastructure SIP revisions addressing the revised standard were due on October 1, 2018.²

On August 20, 2018, Alabama submitted a SIP revision to address the interstate transport requirements for the 2015 8-hour ozone NAAQS. On February 22, 2022, EPA proposed to disapprove Alabama's August 20, 2018, SIP revision because the Agency preliminarily determined, based on updated EPA modeling, that Alabama's SIP revision did not meet CAA requirements to contain the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state. *See* 87 FR 9545. On April 21, 2022, Alabama withdrew its August 20, 2018, SIP revision.³ Additionally, on that same day, Alabama provided EPA a new SIP revision to address the CAA good neighbor interstate transport requirements for the 2015 8-hour ozone NAAQS.

EPA evaluated the SIP revision that Alabama sent on April 21, 2022, for completeness pursuant to the criteria in 40 CFR part 51, appendix V, and found it to be an incomplete SIP

¹ *See* Final Rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292 (October 26, 2015).

² EPA previously made findings of failure to submit with respect to interstate transport obligations for the 2015 8-hour ozone NAAQS for a number of other states. *See* 84 FR 66612 (December 5, 2019). As discussed further in this notice, at the time EPA made those findings, Alabama had provided a complete submission, which it has subsequently withdrawn.

³ *See* the docket for this action for a copy of Alabama's April 21, 2022, withdrawal letter.

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submission.⁴ On June 14, 2022, EPA sent a letter to Alabama explaining the Agency’s incompleteness determination. This letter is included in the docket for this action.⁵

On June 15, 2022, EPA signed a finding of failure to submit for the State of Alabama with respect to the April 21, 2022, SIP submission addressing interstate transport obligations for the 2015 ozone NAAQS. On the same day, EPA notified the State of this finding and posted a prepublication version of the finding of failure to submit to its website.

On June 21, 2022, Alabama resubmitted a SIP submission to address the CAA good neighbor interstate transport requirements for the 2015 8-hour ozone NAAQS, which included the April submission, along with additional information regarding completeness. On June 22, 2022, the Office of the Federal Register published the finding of failure to submit. *See* 87 FR 37235.

EPA reviewed Alabama’s June 21, 2022, SIP submission on the merits and, on October 25, 2022, proposed to disapprove the submittal for failing to adequately address good neighbor requirements under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. *See* 87 FR 64412. EPA is finalizing disapproval of the June 21 submission in a concurrent action.

II. Rescission of the Finding of Failure to Submit for Alabama’s Interstate Transport SIP Submission for the 2015 Ozone NAAQS

The June 21, 2022, submission has been deemed complete by operation of law and contains within it the April 21, 2022, version that was found incomplete. *See* CAA section

⁴ According to the CAA, a SIP revision may be considered “complete” by either of two methods: (1) EPA may make a determination that a SIP is complete under the “completeness criteria” set out at 40 CFR part 51, appendix V, *see* CAA section 110(k)(1); or (2) a SIP may be deemed complete by operation of law if EPA has failed to make a completeness determination within six months after receipt of the State’s SIP submission, *see* CAA section 110(k)(1)(B).

⁵ While this letter is included in the docket for this action, and explains the deficiencies in the April 21, 2022, document, EPA is not reopening its determination of incompleteness in this action.

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110(k)(1)(B). EPA acknowledges that the bases for incompleteness of the April 21, 2022, submission were relatively narrow. Alabama supplied additional information to EPA regarding completeness after receipt of the incompleteness letter from EPA. In light of this unique posture and the present circumstances surrounding the finding of failure to submit and subsequent developments, including EPA's decision to take substantive action on the June 21, 2022, version of the SIP submission, the Agency is rescinding the June 22, 2022, finding of failure to submit contemporaneous with its separate final action disapproving Alabama's June 21, 2022, version of the SIP submission.⁶

The Agency makes no determination here that the finding of failure to submit was issued in error. EPA also notes that, with respect to the CAA obligations at issue here, it remains the Agency's expressed intention to finalize FIPs as needed for upwind states⁷ — including, potentially, Alabama — within the two-year statutory timeframe for EPA to promulgate a FIP following either a disapproval of or a finding of failure to submit a required SIP.

This remains true for Alabama whether the two-year FIP deadline would have run from the date of the finding of failure to submit or is dated from the date of the disapproval action.

EPA's obligation to promulgate a FIP addressing Alabama's good neighbor obligations for the 2015 ozone NAAQS runs from the date of the action disapproving the June 21, 2022, version of the submission.

⁶ Because the incompleteness letter returned the April 21, 2022, submission to the State, there is no further action that needs to be taken on Alabama's April 21, 2022, submission. *See* CAA § 110(k)(1)(C).

⁷ *See* 87 FR 20036, 20038 (April 26, 2022), proposing FIPs for Alabama and 25 other states, with intention to finalize in time for emissions reductions to begin in the 2023 ozone season.

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III. Environmental Justice Considerations

This action rescinds the procedural finding that Alabama failed to submit a SIP revision to address CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. EPA did not conduct an environmental justice analysis for this action because it will not directly affect the air emissions of particular sources. Because this action will not directly affect the air emissions of particular sources, it does not affect the level of protection provided to human health or the environment. Therefore, this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

IV. Notice and Comment Under the Administrative Procedure Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. As discussed above, EPA is concurrently finalizing action on Alabama's June 21, 2022, SIP submittal and will be subject to the same obligations as it would be under a finding of failure to submit (specifically, to promulgate a FIP or approve a SIP). Thus, notice and comment are impracticable and unnecessary with respect to issuance of this final rule, as they were with the original FFS. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

V. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

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B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act. This final action does not establish any new information collection requirement apart from what is already required by law. This action rescinds the procedural finding that Alabama failed to submit a complete SIP revision under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS.

C. Regulatory Flexibility Act (RFA)

This action is not subject to notice and comment requirements because the Agency has invoked the Administrative Procedure Act (APA) “good cause” exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action rescinds the procedural finding that Alabama failed to submit a complete SIP revision under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS. No tribe is subject to the requirement to submit a transport SIP under section 110(a)(2)(D)(i)(I) of the CAA for the

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2015 ozone NAAQS. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it rescinds the procedural finding that Alabama failed to submit a complete SIP revision under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS and does not directly or disproportionately affect children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations.

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EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. This action rescinds the procedural finding that Alabama failed to submit a SIP revision to address CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS and does not have a direct connection to levels of air pollutants or controls to address air emissions.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Judicial Review

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 IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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.

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List of Subjects in 40 CFR Part 52

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

Dated:

Daniel Blackman,
Regional Administrator,
Region 4.