



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2011-0888; FRL-9913-59-Region 5]

Approval and Promulgation of Air Quality Implementation Plans;

Illinois, Michigan, Minnesota, Wisconsin;

Infrastructure SIP Requirements for the 2008 Lead NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of state implementation plan (SIP) submissions from Michigan and Wisconsin while taking final action to approve some elements and disapprove other elements of SIP submissions from Illinois and Minnesota regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 lead National Ambient Air Quality Standards (2008 Pb NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. Illinois and Minnesota already administer federally promulgated regulations that address the final disapprovals described in today's rulemaking. Therefore, these two states are not obligated to submit new or additional regulations to EPA.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2011-0888. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang at (312) 886-0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0258, chang.andy@epa.gov.

SUPPLEMENTARY INFORMATION: The proposed rulemaking associated with this final action was published on May 13, 2014, and EPA received two comment letters during the comment period, which ended on June 12, 2014. One of the letters supported EPA's proposed actions, and the concerns raised in the other letter, as well as EPA's response, will be addressed in this final action.

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of these SIP submissions?

A. What state SIP submissions does this rulemaking address?

B. Why did the states make these SIP submissions?

C. What is the scope of this rulemaking?

II. What is our response to comments received on the proposed rulemaking?

III. What action is EPA taking?

IV. Statutory and Executive Order Reviews.

I. What is the background of these SIP submissions?

A. What state SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the following states in EPA Region 5: Illinois Environmental Protection Agency (Illinois EPA); Michigan Department of Environmental Quality

(MDEQ); Minnesota Pollution Control Agency (MPCA); and Wisconsin Department of Natural Resources (WDNR). The states submitted their 2008 Pb NAAQS infrastructure SIPs on the following dates: Illinois - December 31, 2012; Michigan - April 3, 2012, and supplemented on August 9, 2013, and September 19, 2013; Minnesota - June 19, 2012; and, Wisconsin - July 26, 2012.

B. Why did the states make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 Pb NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for Pb and ozone already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards" (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 PM_{2.5}¹ NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality

¹ PM_{2.5} refers to particulate matter of 2.5 microns or less in diameter, oftentimes referred to as "fine" particles.

Standards (NAAQS)" (2009 Memo), followed by the October 14, 2011, "Guidance on infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)" (2011 Memo). Most recently, EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2), and primarily address the 2008 Pb NAAQS. To the extent that the prevention of significant deterioration (PSD) program is comprehensive and non-NAAQS specific, a narrow evaluation of other NAAQS, such as the 1997 ozone and 2006 PM_{2.5} NAAQS will be included in the appropriate sections.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from Illinois, Michigan, Minnesota, and Wisconsin that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision

thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment plan SIP” submissions to address the nonattainment planning requirements of part D of title I of the CAA, “regional haze SIP” submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

As described in EPA’s May 13, 2014, proposed rulemaking (see 79 FR 27241), this rulemaking will not cover three

substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (collectively referred to as "director's discretion"); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has the authority to address each one of these substantive areas in separate rulemaking. Additionally, the history, interpretation, and rationale related to infrastructure SIP requirements can be found in our May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" (see 79 FR 27241 at 27242 - 27245).

II. What is our response to comments received on the proposed rulemaking?

The public comment period for EPA's proposed actions with respect to each state's satisfaction of the infrastructure SIP requirements for the 2008 Pb NAAQS closed on June 12, 2014. EPA received two comment letters, one of which was in support of our proposed actions. A synopsis of the adverse comments contained in the other letter, as well as EPA's response, is discussed below.

Comment: The commenter noted that EPA did not address Wisconsin's compliance with the requirements to incorporate PM_{2.5} increments² into its SIP. The commenter asserted that because Wisconsin has failed to incorporate the increments, EPA needs to disapprove the applicable infrastructure SIP PSD sub-element for the PM_{2.5} increments, and begin a Federal Implementation Plan (FIP) clock.

Response: In EPA's May 13, 2014, proposed rulemaking, we stated that we were not taking action on Wisconsin's satisfaction of the applicable PSD requirements, e.g., incorporating the PM_{2.5} increments found in section 110(a)(2)(C), section 110(a)(2)(D)(ii), or section 110(a)(2)(J) (see 79 FR 27241 at 27246). Instead, EPA stated that it would address Wisconsin's

² The PM_{2.5} increments and associated implementation rules in question arise from EPA's October 20, 2010, final rule for the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)".

compliance with these requirements in a separate rulemaking. In other words, this comment is not germane to today's rulemaking.

III. What action is EPA taking?

For the reasons discussed in our May 13, 2014, proposed rulemaking and in the above response to a public comment, EPA is taking final action to approve, as proposed, most elements of submissions from Illinois, Michigan, Minnesota, and Wisconsin certifying that their current SIPs are sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2008 Pb NAAQS. We are also taking final action to disapprove some elements of submissions from Illinois and Minnesota related to each state's PSD program. As described in the proposed rulemaking, both of these states already administer Federally promulgated PSD regulations through delegation, and therefore, no practical effect is associated with today's final disapproval of those elements (*see* 79 FR 27241 at 27256-27257).

To clarify, EPA is taking final action to disapprove the infrastructure SIP submissions from Illinois and Minnesota with respect to certain PSD requirements including: (i) provisions that adequately address the 2008 Pb NAAQS; (ii) the explicit identification of oxides of nitrogen (NOx) as a precursor to ozone consistent with the "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard - Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments

Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline"; (iii) the explicit identification of sulfur dioxide (SO₂) and NO_x as PM_{2.5} precursors (and the significant emissions rates for direct PM_{2.5}, and SO₂ and NO_x as its precursors), and the regulation of PM_{2.5} and PM₁₀³ condensables, consistent with the requirements of the final rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})"; (iv) the PM_{2.5} increments and associated implementation rules consistent with the final rule on the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)"; and, (v) permitting of greenhouse gas (GHG) emitting sources at the Federal Tailoring Rule thresholds.

EPA is also taking final action to disapprove the infrastructure SIP submissions from Illinois and Minnesota with respect to the requirements of section 110(a)(2)(D)(ii) related to interstate pollution abatement. Specifically, this section requires states with PSD programs have provisions requiring a new or modified source to notify neighboring states of the

³ PM₁₀ refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as "coarse" particles.

potential impacts from the source, consistent with the requirements of section 126(a).

However, Illinois and Minnesota have no further obligations to EPA because Federally promulgated rules, promulgated at 40 CFR 52.21 are in effect in each of these states. EPA has delegated the authority to Illinois and Minnesota to administer these rules, which include provisions related to PSD and interstate pollution abatement. This final disapproval for Illinois and Minnesota for these infrastructure SIP requirements will not result in sanctions under section 179(a), nor will it obligate EPA to promulgate a FIP within two years of final action if the states do not submit revisions to their PSD SIPs addressing these deficiencies. Instead, Illinois and Minnesota are already subject to the Federally promulgated PSD regulations, and both states administer these regulations via EPA's delegated authority.

EPA's final actions for each state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

Element	IL	MI	MN	WI
(A): Emission limits and other control measures	A	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A	A
(C)1: Enforcement of SIP measures	A	A	A	A
(C)2: PSD program for Pb	D,*	A	D,*	NA
(C)3: NOx as a precursor to ozone for PSD	D,*	A	D,*	NA
(C)4: PM _{2.5} Precursors / PM _{2.5} and PM ₁₀ condensables for PSD	D,*	A	D,*	NA

(C)5: PM _{2.5} Increments	D,*	A	D,*	NA
(C)5: GHG permitting thresholds in PSD regulations	D,*	A	D,*	NA
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A	A	A	A
(D)2: PSD	**	**	**	**
(D)3: Visibility Protection	A	A	A	A
(D)4: Interstate Pollution Abatement	D,*	A	D,*	A
(D)5: International Pollution Abatement	A	A	A	A
(E): Adequate resources	A	A	A	A
(E): State boards	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A
(G): Emergency power	A	A	A	A
(H): Future SIP revisions	A	A	A	A
(I): Nonattainment area plan or plan revisions under part D	NA	NA	NA	NA
(J)1: Consultation with government officials	A	A	A	A
(J)2: Public notification	A	A	A	A
(J)3: PSD	**	**	**	**
(J)4: Visibility protection	+	+	+	+
(K): Air quality modeling and data	A	A	A	A
(L): Permitting fees	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A

In the above table, the key is as follows:

A	Approve
NA	No Action / Separate Rulemaking
D	Disapprove
+	Not germane to infrastructure SIPs
*	Federally promulgated rules in place
**	Previously discussed in element (C)

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, 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 action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 CAA; 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 rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not 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 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 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, Lead,
Reporting and recordkeeping requirements.

Dated: July 2, 2014.

Susan Hedman,
Regional Administrator, Region 5.

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.*

2. Section 52.745 is amended by adding paragraph (d) to read as follows:

§52.745 Section 110(a)(2) infrastructure requirements.

* * * * *

(d) Approval and Disapproval – In a December 31, 2012, submittal, Illinois certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 lead (Pb) NAAQS. EPA is not taking action on the state board requirements of (E)(ii). Although EPA is disapproving portions of Illinois' submission addressing the prevention of significant deterioration, Illinois continues to implement the Federally promulgated rules for this purpose as they pertain to (C), (D)(i)(II), (D)(ii), and (J).

3. In § 52.1170, the table in paragraph (e) is amended by adding an entry at the end of the table for "Section 110(a)(2) Infrastructure Requirements for the 2008 lead (Pb) NAAQS" to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-Approved Michigan Nonregulatory and Quasi-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
Section 110(a)(2) Infrastructure Requirements for the 2008 lead (Pb) NAAQS.	Statewide	4/3/2012, 8/9/213	[INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on the state board requirements of (E)(ii). We will address these requirements in a separate action.

4. In § 52.1220, the table in paragraph (e) is amended by adding an entry at the end of the table for "Section 110(a)(2) Infrastructure Requirements for the 2008 lead (Pb) NAAQS" to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(e) * * *

EPA-Approved Minnesota Nonregulatory Provisions

Name of Nonregulatory SIP Provision	Applicable geographic or nonattainment area	State submittal date / effective date	EPA approved date	Comments
Section 110(a)(2) Infrastructure Requirements	Statewide	6/19/2012 (submittal date)	[INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER],	This action addresses the following CAA elements: 110(a)(2)(A), (B),

for the 2008 lead (Pb) NAAQS.			[INSERT FEDERAL REGISTER CITATION]	(C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on the state board requirements of (E)(ii). We will address these requirements in a separate action. Although EPA is disapproving portions of Minnesota's submission addressing the prevention of significant deterioration, Minnesota continues to implement the Federally promulgated rules for this purpose as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J).
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5. Section 52.2591 is amended by adding paragraph (f) to read as follows:

§ 52.2591 Section 110(a)(2) infrastructure requirements.

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(f) Approval – In a July 26, 2012, submittal, Wisconsin certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 lead (Pb) NAAQS. We are not taking action on the prevention of significant deterioration requirements related to section 110(a)(2)(C), (D)(i)(II), and (J), and the state board requirements of (E)(ii). We will address these requirements in a separate action.

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