



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2015-0464; FRL-9939-78-Region 5]**

**Air Plan Approval; Wisconsin; Wisconsin State Board Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of state implementation plan (SIP) submissions from Wisconsin regarding the state board requirements under section 128 of the Clean Air Act (CAA). EPA is also approving elements of SIP submissions from Wisconsin regarding the infrastructure requirements of section 110, relating to state boards for the 1997 ozone, 1997 fine particulate (PM<sub>2.5</sub>), 2006 PM<sub>2.5</sub>, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), and 2010 sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS). The proposed rulemaking associated with this final action was published on September 11, 2015, and EPA received no comments during the comment period, which ended on October 13, 2015.

**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-2015-0464. All documents in the

docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (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 either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the 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 Eric Svingen, Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, [svingen.eric@epa.gov](mailto:svingen.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:** 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?
- II. What guidance is EPA using to evaluate these SIP submissions?
- III. What is the result of EPA's review of these SIP submissions?
- IV. What action is EPA taking?
- V. Incorporation by Reference.
- VI. Statutory and Executive Order Reviews.

**I. What is the background of these SIP submissions?**

This rulemaking addresses submissions from the Wisconsin Department of Natural Resources (WDNR) dated July 2, 2015. These submissions are intended to address CAA requirements relating to the state board requirements under section 128, as well as infrastructure requirements of section 110, relating to state boards for the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

The requirement for states to make infrastructure SIP submissions 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 section 110(a)(1) and (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. This specific rulemaking is only taking action on the CAA 110(a)(2)(E)(ii) element of these infrastructure SIP requirements, which is the only infrastructure SIP element addressed in WDNR's submittal dated July 2, 2015.

## **II. What guidance is EPA using to evaluate these SIP submissions?**

EPA's guidance for these submissions is highlighted 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<sub>2.5</sub><sup>1</sup> National Ambient Air Quality Standards" (2007 Guidance). Further guidance is provided in a September 13, 2013, document entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a) (1) and (2)" (2013 Guidance).

**III. What is the result of EPA's review of these SIP submissions?**

Pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. WDNR provided notice of a public comment period on May 9, 2015, held a public hearing at WDNR State Headquarters on June 9, 2015, and closed the public comment period on June 11, 2015. No comments were received.

Wisconsin provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 128 and 110(a) (2) (E) (ii) for the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS, as applicable.

On September 11, 2015 (80 FR 54744), EPA published a proposed rule that would approve these submissions into

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<sup>1</sup> PM<sub>2.5</sub> refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, oftentimes referred to as "fine" particles.

Wisconsin's SIP. This proposed rule contained a detailed evaluation of how Wisconsin's submissions satisfy certain requirements under CAA sections 110 and 128. No comments were received. Therefore, EPA is finalizing this rule as proposed.

#### **IV. What action is EPA taking?**

EPA is taking final action to incorporate *Wis. Stats.* 15.05, 19.45(2), and 19.46 into Wisconsin's SIP. EPA is further approving these submissions as meeting CAA obligations under section 128, as well as 110(a)(2)(E)(ii) for the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

#### **V. Incorporation by Reference.**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

#### **VI. 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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, 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 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 after 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 23, 2015.

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 52.2570 is amended by adding paragraph (c) (134) to read as follows:

**§ 52.2570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(134) On July 2, 2015, the Wisconsin Department of Natural Resources submitted a request to revise the State Implementation Plan to satisfy the state board requirements under section 128 of the Clean Air Act.

(i) Incorporation by reference.

(A) Wisconsin Statutes, section 15.05 Secretaries, as revised by 2013 Wisconsin Act 20, enacted on June 30, 2013. (A copy of 2013 Wisconsin Act 20 is attached to section 15.05 to verify the enactment date.)

(B) Wisconsin Statutes, section 19.45(2), as revised by 1989 Wisconsin Act 338, enacted on April 27, 1990. (A copy of

1989 Wisconsin Act 338 is attached to section 19.45(2) to verify the enactment date.)

(C) Wisconsin Statutes, section 19.46 Conflict of interest prohibited; exception, as revised by 2007 Wisconsin Act 1, enacted on February 2, 2007. (A copy of 2007 Wisconsin Act 1 is attached to section 19.46 to verify the enactment date.)

3. Section 52.2591 is amended by adding paragraph (j) to read as follows:

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

\* \* \* \* \*

(j) Approval – In a July 2, 2015, submission, Wisconsin certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(E)(ii) for the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.