



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2014-0704; FRL-9950-54-Region 5]

**Wisconsin; Approval/Disapproval of Interstate Transport
Requirements for the 2008 Ozone NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving elements of State Implementation Plan (SIP) submission from Wisconsin regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 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 are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning interstate transport provisions for which Wisconsin made a SIP submission that, among other things, certified that the existing SIP was sufficient to meet the interstate transport requirements for the 2008 ozone NAAQS.

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-2014-0704. All documents in the docket are listed on the 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 through www.regulations.gov or please contact the person identified in the "For Further Information Contact" section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9401, arra.sarah@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 this SIP submission?

II. What action did EPA propose on the SIP submission?

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

IV. What action is EPA taking?

V. Statutory and Executive Order Reviews.

I. What is the background of this SIP submission?

This rulemaking addresses CAA section 110(a)(2)(D)(i) requirements in an infrastructure SIP submission addressing the applicable infrastructure requirements with respect to the 2008 ozone NAAQS, submitted by the Wisconsin Department of Natural Resources (WDNR) on June 20, 2013, and clarified in a letter dated January 28, 2015.

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 commonly refers to such state plans as "infrastructure SIPs."

This rulemaking takes action on two CAA section 110(a)(2)(D)(i) requirements which apply to these submissions. In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS ("prong one"), or interfering with maintenance of the NAAQS ("prong two"), by any another state. Section 110(a)(2)(D)(i)(II) requires that infrastructure SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality ("prong three") and to protect visibility ("prong four") in another state. This rulemaking addresses prongs one and two of this CAA section. The majority of the other infrastructure elements were approved in rulemakings on September 11, 2015 (80 FR 54725).

II. What action did EPA propose on the SIP submission?

The proposed rulemaking associated with today's final action was published on March 16, 2016 (81 FR 14025). In that action, EPA proposed to disapprove the Wisconsin SIP for the prong two requirement because the WDNR SIP submission did not provide an adequate technical analysis demonstrating that the state's SIP contained adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with the 2008 ozone NAAQS in any other state and because EPA's most recent modeling indicated that emissions from Wisconsin were projected to contribute to projected downwind maintenance receptors in another state. EPA also proposed to approve the Wisconsin SIP for the prong one requirement because, although WDNR did not provide information or analyses explaining why existing SIP provisions are adequate to prevent significant contribution to nonattainment in downwind states, EPA's independent modeling presented in the Notice of Data Availability and the Cross-State Air Pollution Update Rule indicated that Wisconsin emissions were not linked to any projected downwind nonattainment receptors. Therefore, EPA proposed to find that the Wisconsin SIP had adequate provisions to prevent such significant contribution to nonattainment for the 2008 ozone standard.

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

During the comment period, which ended on April 15, 2016, EPA did not receive any comments on the Wisconsin portion of the proposed notice. Comments pertaining to Ohio and Indiana are addressed in a June 15, 2016 rulemaking (81 FR 38957).

IV. What action is EPA taking?

EPA, as proposed, is approving prong one and disapproving prong two of a required infrastructure element with respect to CAA section 110(a)(2)(D)(i), interstate transport, for the 2008 ozone NAAQS. The approval is based on the June 20, 2013 SIP submission in which Wisconsin certified that the current SIP is sufficient to meet the CAA requirements. The disapproval portion of this action triggers an obligation under CAA section 110(c) for EPA to promulgate a Federal Implementation Plan (FIP) no later than two years from the effective date of this disapproval, if EPA has not approved a SIP revision or revisions addressing the deficiencies identified in this action. The disapproval in this action is not tied to attainment planning requirements and therefore does not start any sanction clocks.

V. Statutory and Executive Order Reviews.

A. *Executive Order 12866: Regulatory Planning and Review 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.

B. *Paperwork Reduction Act (PRA)*

This rule does not impose an information collection burden under the provisions of the PRA.

C. *Regulatory Flexibility Act (RFA)*

The Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action merely proposes to disapprove state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

D. *Unfunded Mandates Reform Act (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. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order

12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because it proposes to disapprove a state rule.

H. *Executive Order 13211: Actions Concerning Regulations 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 (NTTAA)*

This rulemaking does not involve technical standards.

J. *Executive Order 12898: Federal Actions to Address*

Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

Congressional Review Act

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 rule 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 the 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. 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, Ozone.

Dated: August 1, 2016.

Robert A. Kaplan,
Acting 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 52.2591 is amended by revising paragraph (g) to read as follows:

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

* * * * *

(g) Approval – In a June 20, 2013, submission with a January 28, 2015, clarification, 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 ozone NAAQS. For 110(a)(2)(D)(i)(I), we are approving prong one and disapproving prong two. 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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