



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2018-0383; FRL-9988-37-Region 5]

Air Plan Approval; Illinois; Nonattainment New Source Review

Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, as a State Implementation Plan (SIP) revision, Illinois' certification that its SIP satisfies the nonattainment new source review (NNSR) requirements of the Clean Air Act (CAA) for the 2008 8-hour ozone National Ambient Air Quality Standard ("NAAQS" or "Standard"). This action permanently stops the Federal Implementation Plan (FIP) clocks triggered by EPA's February 3 and December 11, 2017 findings that Illinois failed to submit an NNSR plan for the Illinois portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin area (Chicago Nonattainment Area).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2018-0383. 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 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 David Ogulei, Environmental Engineer, at (312) 353-0987 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: David Ogulei, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-0987, ogulei.david@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:

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A. General Requirements

B. Submission to Congress and the Comptroller General

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I. Background

On March 6, 2015, EPA issued a final rule titled "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (SIP Requirements Rule), which detailed the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS. See 80 FR 12264 (March 6, 2015).¹ Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (i.e., July

¹ The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), major new source review (NSR), emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

20, 2015), based on 2012-2014 monitoring data. See 80 FR 12268 and 40 CFR 51.1103.

EPA classified the Chicago Nonattainment Area as a marginal nonattainment area for the 2008 8-hour ozone NAAQS on June 11, 2012 (effective July 20, 2012) using certified ambient air quality monitoring data from calendar years 2009-2011. See 77 FR 34221. The Chicago Nonattainment Area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and parts of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and part of Kenosha County in Wisconsin.

On May 4, 2016, pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago Nonattainment Area failed to attain the 2008 8-hour ozone NAAQS by the July 20, 2015 marginal area attainment deadline and did not meet the CAA section 181(a)(5) criteria, as interpreted in 40 CFR 51.1107, for a 1-year attainment date extension. See 81 FR 26697 (May 4, 2016). Thus, EPA reclassified this area by operation of law as moderate for the 2008 8-hour ozone NAAQS. *Id.*² In that action, EPA established January 1, 2017, as the due date for the State to

² The Metro-East area also did not attain the 2008 8-hour ozone NAAQS by July 20, 2015; however, EPA found that area to be eligible for a 1-year attainment date extension, for a new attainment date of July 20, 2016. See 81 FR 26697 (May 4, 2016). The Metro-East area includes the Illinois portion of the St. Louis-St. Charles-Farmington, Missouri-Illinois ozone nonattainment area, which includes Madison, Monroe and St. Clair Counties in Illinois, and Franklin, Jefferson, St. Charles, and St. Louis Counties and the City of St. Louis in Missouri.

submit all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas.³

As explained in the SIP Requirements Rule, Illinois was required to develop a SIP revision addressing NNSR requirements for its marginal ozone nonattainment areas by July 20, 2015. See 80 FR 12266 (March 6, 2015). Additionally, because the Chicago Nonattainment Area was reclassified to moderate nonattainment, Illinois was required to submit a moderate area NNSR SIP by January 1, 2017. See 81 FR 26697 (May 4, 2016).⁴ NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. See CAA sections 172(c)(5), 173 and 182. The NNSR requirements for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.160-165.

On February 3, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP revisions to satisfy

³ On November 14, 2018, EPA proposed to determine that the Illinois portion of the Chicago Nonattainment Area failed to attain the 2008 ozone NAAQS by the attainment date; thus, the Illinois portion of the Chicago area will be reclassified by operation of law to "serious" upon the effective date of the final reclassification notice. See 83 FR 56781. Consequently, Illinois must submit a SIP revision to satisfy the statutory and regulatory requirements for serious areas for the 2008 ozone NAAQS by the submission deadlines established in the final reclassification notice. Today's action only addresses the moderate and marginal area SIP requirements as addressed by the February 3 and December 11, 2017 findings.

⁴ Illinois' obligation to submit the NNSR SIP was not affected by the D.C. Circuit Court's February 16, 2018 decision on portions of the SIP Requirements Rule in *South Coast Air Quality Mgmt. Dist. v. EPA*, 882 F.3d 1138 (D.C. Cir. Feb. 16, 2018).

certain nonattainment plan requirements for the 2008 ozone NAAQS. See 82 FR 9158. EPA found, *inter alia*, that Illinois failed to timely submit a SIP revision to satisfy marginal NNSR requirements for the Chicago and Metro-East ozone nonattainment areas. In addition, on December 11, 2017, EPA found, *inter alia*, that Illinois failed to timely submit a revision to its SIP to satisfy moderate NNSR requirements for the Chicago Nonattainment Area. See 82 FR 58118.

The February 3 and December 11, 2017 findings established certain deadlines for the imposition of sanctions if Illinois does not submit a timely SIP revision addressing the requirements for which EPA made the findings, as well as deadlines for EPA to promulgate a FIP to address any outstanding SIP requirements. Specifically, Illinois was required to submit a complete SIP addressing the deficiencies that were the basis for each finding within 18 months of the effective dates of the findings (i.e., September 6, 2018 and July 10, 2019, respectively) so as to avoid triggering, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) in the affected nonattainment area. Additionally, these rules triggered the requirement for EPA to promulgate a FIP for the affected nonattainment area if EPA does not take final action to approve the State's submittal within 2

years of the effective date of the findings (*i.e.*, March 6, 2019, and January 10, 2020, respectively).

On March 1, 2018, EPA redesignated the Metro-East area to attainment for the 2008 8-hour ozone NAAQS because EPA found this area to have met the statutory requirements for redesignation to attainment under the CAA. See 83 FR 8756 (March 1, 2018). In that action, EPA also approved, as a revision to the Illinois SIP, Illinois' plan for maintaining the 2008 ozone NAAQS through calendar year 2030 in the Metro-East area. NNSR SIP revisions are no longer required if an area is redesignated to attainment; the CAA's Prevention of Significant Deterioration (PSD) program requirements apply in lieu of NNSR. See 82 FR 9160 n. 16 (February 3, 2017). Because the Metro-East area is now designated attainment, a NNSR SIP is not required for this area.

On May 23, 2018, the Illinois Environmental Protection Agency (IEPA) submitted a SIP revision requesting EPA's approval of Illinois' certification that its existing SIP-approved NNSR regulations fully satisfy the NNSR requirements set forth in 40 CFR 51.165 for both marginal and moderate ozone nonattainment areas for the 2008 ozone NAAQS. IEPA certified that its existing NNSR program covering its ozone nonattainment areas for the 2008 8-hour ozone NAAQS, including the Chicago Nonattainment

Area, contains the NNSR elements required by 40 CFR 51.165, as amended by the SIP Requirements Rule, for ozone and its precursors. IEPA certified that it already complies with CAA sections 172(c)(5) and 182(a)(2)(C), which require states that have been designated nonattainment for an ozone NAAQS to submit plans or plan revisions containing certain required elements, including permit programs for the construction and operation of new or modified stationary sources in the nonattainment area. Specifically, IEPA certified that its existing NNSR regulations in Title 35 of Illinois Administrative Code Part 203 (35 IAC Part 203, Major Stationary Sources Construction And Modification) fully satisfy the NNSR requirements set forth in 40 CFR 51.165 for both marginal and moderate ozone nonattainment areas because they contain all NNSR SIP elements required by 40 CFR 51.165 for its ozone nonattainment areas.

On October 9, 2018, EPA issued a notice of proposed rulemaking (proposed rule) in which we proposed to find that IEPA's submittal addresses Illinois' obligations as described in the February 3 and December 11, 2017 findings. See 83 FR 50551. Specifically, we proposed to conclude that Illinois' submittal fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as Illinois' obligations

under EPA's February 3 and December 11, 2017 findings.

II. Summary of EPA Analysis

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. See 40 CFR 51.1114. These NNSR program requirements include those promulgated in the "Phase 2 Rule" implementing the 1997 8-hour ozone NAAQS (70 FR 71612, November 29, 2005) and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: set major source thresholds for nitrogen oxides (NOx) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)-(iv) and (a)(1)(iv)(A)(2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NOx as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NOx as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)-(C) and (E); contain provisions for emissions

reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1) and (2); provide that the requirements applicable to VOC also apply to NOx pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NOx pursuant to 40 CFR 51.165(a)(9)(i)-(iii) (renumbered as (a)(9)(ii)-(iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105. See 40 CFR 51.165(a)(12).

Illinois' NNSR rules, as set forth in 35 IAC Part 203, are designed to ensure that the construction of a major new source of air pollution or a large increase of emissions at an existing source does not interfere with the attainment demonstration and does not delay timely achievement of the ambient air quality standards. The rules require owners or operators of major projects to: 1) apply the Lowest Achievable Emission Rate (LAER) or, for certain existing sources, the Best Available Control Technology (BACT) on emissions of the nonattainment pollutant from the major project; 2) offset the emissions of the nonattainment pollutant from a major project by emission

reductions from other sources in the nonattainment area; 3) demonstrate that other sources in Illinois which are under common ownership or control with the person proposing the project are in compliance with the CAA; and 4) analyze alternatives to the particular project to determine whether the benefits of the project outweigh the environmental and social costs.

EPA last approved revisions to Illinois' NNSR rules on May 13, 2003. See 68 FR 25504.⁵ In that action, EPA approved amendments to 35 IAC 203 to better track the language of CAA sections 182(c)(6), (7), and (8). See 68 FR 25505. The changes dealt with how one determines whether a proposed change at a source is a major modification.

Based on our review of the NNSR checklist that IEPA incorporated into its submittal, and the version of 35 IAC 203 approved into the Illinois SIP, we are finding that Illinois' SIP-approved NNSR program at 35 IAC 203 contains the minimum required NNSR elements as specified in 40 CFR 51.165 for Illinois' ozone nonattainment areas. We are approving Illinois' certification that 35 IAC 203 is consistent with 40 CFR 51.165 and meets the requirements of CAA sections 172(c)(5), 173,

⁵ For other relevant approvals, see 45 FR 11470 (February 21, 1980); 46 FR 44172 (September 3, 1981); 50 FR 38803 (September 25, 1985); 51 FR 10837 (March 31, 1986); 57 FR 59928 (December 17, 1992); and 60 FR 49778 (September 27, 1995).

110(a)(2), 182(a)(4) and 182(b)(5) under the 2008 ozone standard for the Illinois portion of the Chicago Ozone Nonattainment Area. While some of Illinois' regulations are worded or organized differently than the Federal counterparts, EPA finds that these differences do not affect the relative stringency of such provisions.

The following table lists the specific provisions of Illinois' NNSR rules that EPA finds to address the required elements of the Federal NNSR rules:

Federal Rule	Illinois Rule
40 CFR 51.165(a)(1)(iv)(A)(1)(i)-(iv), (a)(1)(iv)(A)(2)	35 IAC 203.206(b)
40 CFR 51.165(a)(1)(iv)(A)(3)	35 IAC 203.206(c)
40 CFR 51.165(a)(1)(v)(E)	35 IAC 203.207(b)
40 CFR 51.165(a)(1)(v)(F)	35 IAC 203.207(f)
40 CFR 51.165(a)(1)(x)(A)-(C); (E)	35 IAC 203.207(d), (e) and (f), and 203.209(a) and (b)
40 CFR 51.165(a)(3)(ii)(C)(1) and (2)	35 IAC 203.302(a), 203.303(b) and (f), 203.602, and 203.701
40 CFR 51.165(a)(8)	35 IAC 203.206(b), 203.207(b), (d), (e) and (f), 203.209(a) and (b), 203.301(e) and (f), and 203.302
40 CFR 51.165(a)(9)(ii), (iv)	35 IAC 203.302(a)

III. What Comments Did We Receive on the Proposed Rule?

Our October 9, 2018 proposed rule (83 FR 50551) provided a 30-day public review and comment period. During the comment period, which closed on November 8, 2018, we received one set of

comments. Although the commenter generally supported our proposal, the commenter also raised concerns that we address below.

Comment: The commenter asserts that due to potential increased health risks to vulnerable communities, new VOC emissions should not be permitted in extreme ozone nonattainment areas pursuant to 40 CFR 51.165(a)(1)(v)(F). The commenter suggests that instead of issuing new source review (NSR) permits in extreme nonattainment areas, any VOC emissions increases should be banned, and fines should be assessed for each additional ton of VOC emitted within the extreme nonattainment area. The commenter urges Illinois to revise its SIP to eliminate the provisions for permitting of new emissions in extreme ozone nonattainment areas.

EPA Response: As we discussed at proposal, our review of Illinois' submittal is limited to the extent to which Illinois' existing NNSR regulations are consistent with the underlying Federal requirements for the 2008 8-hour ozone NAAQS as set forth in 40 CFR 51.160-51.165. EPA is not, through this action, revising the underlying Federal requirements.

Under 40 CFR 51.165(a)(1)(v)(F), if a major stationary source of VOC is located in an extreme ozone nonattainment area that is subject to subpart 2 of part D of title 1 of the CAA,

any physical change in, or change in the method of operation of, the major stationary source that results in any increase in emissions of VOC from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone. This Federal requirement therefore provides a mechanism for NSR of new or increased VOC emissions in extreme ozone nonattainment areas. As we discussed in the proposed rule, Illinois has certified, and EPA has found, that the requirements of 40 CFR 51.165(a)(1)(v)(F) are addressed by 35 IAC 203.207(f). Note, however, that under both the Federal and Illinois' EPA-approved regulations, the owner or operator of a new major source or major modification that proposes new or increased VOC or NOx emissions in an extreme ozone nonattainment area must offset such increase in emissions by an amount equal to or greater than 1.5 tons for each ton of the allowable emissions from the new source or the net increase in emissions from the modification. See 40 CFR 51.165(a)(9)(ii)(E) and 35 IAC 203.302(a)(1)(E).⁶ In addition, if Illinois were to revise its existing regulations to impose additional restrictions on

⁶ Note that the analysis we included with the proposed rule contained a typographical error at 83 FR 50555. We incorrectly listed the offset requirement of 1.3:1, which applies in severe ozone nonattainment areas, twice. The second reference to the 1.3:1 offset ratio should have been to 1.5:1 for extreme ozone nonattainment areas.

new or increased VOC emissions in extreme ozone nonattainment areas, such revisions could make Illinois' regulations inconsistent with the Federal requirements.

IV. What Action is EPA Taking?

EPA is approving Illinois' May 23, 2018 SIP revision addressing the NNSR requirements for the 2008 8-hour ozone NAAQS for the Chicago Nonattainment Area. EPA has concluded that Illinois' submittal fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under EPA's February 3 and December 11, 2017 findings. This final action to approve Illinois' NNSR certification addresses the deficiencies that were the basis for the February 3 and December 11, 2017 findings and stops the FIP clock for the Illinois portion of the Chicago Nonattainment Area.

V. Statutory and Executive Order Reviews.

A. General Requirements

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).

This final rule approving Illinois' 2008 8-hour ozone NAAQS NNSR SIP revision 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).

B. *Submission to Congress and the Comptroller General*

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).

C. *Petitions for 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 after 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 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) of the CAA.)

List of Subjects in 40 CFR Part 52

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

Dated: December 12, 2018.

Cathy Stepp,
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. In § 52.720, the table in paragraph (e) is amended by adding an entry entitled "Ozone (8-hour, 2008) Nonattainment New Source Review Requirements" before the entry entitled "Regional haze plan" to read as follows:

§ 52.720 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED ILLINOIS NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
Ozone (8-hour, 2008) Nonattainment New Source Review Requirements	Chicago area	5/23/2018	[insert date of publication in the Federal Register], [Insert Federal Register citation]	