



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2018-0043; FRL-9999-78-Region 5]

**Air Plan Approval; Illinois; State Board and Infrastructure SIP
Requirements**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Illinois state implementation plan (SIP) addressing the state board requirements under section 128 of the Clean Air Act (CAA) and the related infrastructure element for several National Ambient Air Quality Standard (NAAQS) infrastructure submissions. 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.

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-2018-0043. 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 Sarah Arra, Environmental Scientist, at (312) 886-9401 before visiting the Region 5 office.

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.

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 is our response to comments received on the proposed rulemaking?
- III. What action is EPA taking?
- IV. Incorporation by Reference.

V. Statutory and Executive Order Reviews.

I. What is the background of this SIP submission?

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an "infrastructure SIP." This rulemaking addresses a January 25, 2018, submission from the Illinois Environmental Protection Agency (IEPA) addressing section 128 requirements and revisions to infrastructure SIP submissions for the 2006 fine particulate matter (PM_{2.5}), 2008 lead, 2008 ozone, 2010 nitrogen dioxide (NO₂), 2010 sulfur dioxide (SO₂), and 2012 PM_{2.5} NAAQS specific to CAA section 110(a)(2)(E) (also known as "element E"). EPA is not acting on the 2012 PM_{2.5} NAAQS infrastructure revision in this rulemaking.

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

The proposed rulemaking associated with this final action was published on May 16, 2019 (84 FR 22082), and EPA received one comment during the comment period, which ended on June 17, 2019. A synopsis of the adverse comment, as well as EPA's response, is discussed below.

Comment: The commenter suggests that the proposed SIP revision is not approvable because definitions of several of the

key terms are not located anywhere in the Illinois Administrative Code, specifically "significant portion of income," "represent the public interest," "adequately disclosed," "conflict of interest," and "bias." The commenter also states that the text of the new SIP provision does not specify that it applies to the Pollution Control Board or to the IEPA.

Response: EPA disagrees that this action is not approvable for the reasons stated in the comment. The language that the state has adopted and that EPA is approving into the Illinois SIP is identical to the language in CAA section 128, and therefore meets the statutory requirements. When appropriate, EPA allows states to adopt identical language from the CAA into a SIP for statutory and regulatory requirements. EPA notes that the CAA itself does not define the terms noted by the commenter, and therefore the meanings may depend upon the specific facts and circumstances of a given situation. While EPA's 1978 guidance for CAA section 128 provides recommended definitions, the guidance also specifies that it does not create a requirement that all SIPs must include EPA's suggested definitions for CAA section 128 verbatim, or that states must include any such definitions in SIPs at all.¹ The legislative

¹ 1978 Guidance, "Model Letter from Regional Offices to States," at 2-3.

history of the 1977 amendments to the CAA also indicates that states have some flexibility to determine the specific provisions needed to satisfy the requirements of section 128, so long as the statutory requirements are met, specifically, the conference committee for the 1977 amendments stated that "it is the responsibility of each state to determine the specific requirements to meet the general requirements of [section 128]."² EPA has previously approved SIP provisions with requirements that closely track or mirror the explicit statutory language of CAA section 128 as meeting the requirements of CAA section 128 into other states' SIPs³.

The SIP revision language is also clear that it applies to the Pollution Control Board and IEPA because the added language appears in the Illinois Administrative Code under Title 35: Environmental Protection, Subtitle A: General Provisions, Chapter 1: Pollution Control Board. Therefore, the "Board" referenced in the SIP revision is plainly referring to IEPA's Pollution Control Board because that board is the subject of the entire chapter. Thus, the Board is a "board or body" within the meaning of CAA section 128, and the state is properly imposing

²H.R. Rep. 95-564 (1977), reprinted in *Legislative History of the Clean Air Act Amendments of 1977*, 526-527 (1978).

³ See also EPA proposed rule on South Dakota, 79 FR 71040, 71052, finalized at 80 FR 4799; and Alabama, 83 FR 5594, finalized at 83 FR 31454

requirements on the Board through SIP provisions as required by CAA section 110(a)(2)(E)(ii).

III. What Action is EPA Taking?

EPA is approving 35 Ill. Adm. Code 101.112(d) as satisfying the requirements of CAA section 128. EPA is also approving the infrastructure element under CAA section 110(a)(2)(E)(ii) for the 2006 PM_{2.5}, 2008 lead, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Final approval of this action will terminate the Federal Implementation Plan Clock started for the disapproval of CAA section 110(a)(2)(E)(ii) for the 2006 PM_{2.5} and 2008 ozone NAAQS (see 80 FR 51730 (Aug. 26, 2015)).

IV. 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 Illinois 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 through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the Illinois SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable

under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁴

V. 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

⁴ 62 FR 27968 (May 22, 1997).

- 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 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 CAA 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, Sulfur oxides.

Dated: September 4, 2019.

Cheryl L Newton,
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 52.720 is amended:

a. In the table in paragraph (c), under "Chapter I: Pollution Control Board," by adding entries for "Part 101: General Rules" before "Part 106: Procedural Regulations"; and

b. In the table in paragraph (e), under the heading "Section 110(a)(2) Infrastructure Requirements," by revising the entries for "2006 24-hour PM_{2.5} NAAQS Infrastructure Requirements", "2008 Lead NAAQS Infrastructure Requirements", "2008 Ozone NAAQS Infrastructure Requirements", "2010 NO₂ NAAQS Infrastructure Requirements", and "2010 SO₂ NAAQS Infrastructure Requirements".

The additions and revisions read as follows:

§ 52.720 Identification of plan.

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(c) * * *

EPA--APPROVED ILLINOIS REGULATIONS AND STATUTES

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *				
Part 101: General Rules				
Subpart A: General Provisions				
101.112	Bias and Conflict	7/5/2017	[insert date of publication in the	Only paragraph

	of Interest		Federal Register], [Insert Federal Register citation]	(d)
*	*	*	*	*

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(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
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements				
*	*	*	*	*
2006 24-hour PM _{2.5} NAAQS Infrastructure Requirements	Statewide	08/09/11, supplemented on 08/25/11, 06/27/12, and 7/5/2017	[insert date of publication in the Federal Register], [Insert Federal Register citation]	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(i)(I) [Prongs 1 and 2], (D)(ii), and the PSD portions of (C), (D)(i)(II) [Prong 3], and (J), which have been disapproved. The disapproved elements have Federal Implementation Plans (FIP) in place and no further action is needed.
2008 Lead NAAQS Infrastructure Requirements	Statewide	12/31/12 and 7/5/2017	[insert date of publication in the Federal Register], [Insert Federal Register citation]	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(ii), and the PSD portions of (C), (D)(i)(II) [Prong 3], and (J), which have been disapproved. The disapproved elements have Federal Implementation Plans (FIP) in place and no further action is needed.
2008 Ozone	Statewide	12/31/12 and	[insert	All CAA infrastructure

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
NAAQS Infrastructure Requirements		7/5/2017	date of publication in the Federal Register], [Insert Federal Register citation]	elements under 110(a)(2) have been approved except (D)(i)(I) [Prongs 1 and 2], (D)(ii), and the PSD portions of (C), (D)(i)(II) [Prong 3], and (J), which have been disapproved. The disapproved elements have Federal Implementation Plans (FIP) in place and no further action is needed.
2010 NO ₂ NAAQS Infrastructure Requirements	Statewide	12/31/12 and 7/5/2017	[insert date of publication in the Federal Register], [Insert Federal Register citation]	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(ii), and the PSD portions of (C), (D)(i)(II) [Prong 3], and (J), which have been disapproved. The disapproved elements have Federal Implementation Plans (FIP) in place and no further action is needed.
2010 SO ₂ NAAQS Infrastructure Requirements	Statewide	12/31/12 and 7/5/2017	[insert date of publication in the Federal Register], [Insert Federal Register citation]	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(ii), and the PSD portions of (C), (D)(i)(II) [Prong 3], and (J), which have been disapproved, and (D)(i)(I) [Prongs 1 and 2], which have not yet been submitted. The disapproved elements have Federal Implementation Plans (FIP) in place and no

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
				further action is needed.
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[FR Doc. 2019-20129 Filed: 9/20/2019 8:45 am; Publication Date: 9/23/2019]