



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2018-0664; FRL-10013-18-Region 5]**

**Air Plan Approval; Wisconsin; Infrastructure SIP Requirements  
for the 2015 Ozone NAAQS**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from Wisconsin regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2015 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.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0664 at <http://www.regulations.gov>, or via email to [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **"For Further Information Contact"** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**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 this SIP submission?
- II. What is EPA's analysis of this SIP submission?
- III. What action is EPA taking?
- IV. 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." These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through our September 13, 2013 Infrastructure SIP Guidance and through regional actions on infrastructure submissions (EPA's 2013 Guidance).<sup>1</sup> Unless otherwise noted below, we are following that existing approach in acting on this submission. In

---

<sup>1</sup> EPA explains and elaborates on these ambiguities and its approach to address them in our September 13, 2013 Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including EPA's prior action on Wisconsin's infrastructure SIP to address the 2012 fine particulate matter (PM<sub>2.5</sub>) NAAQS (81 FR 95043 (December 27, 2016)).

addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.<sup>2</sup> EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

## **II. What is EPA's analysis of this SIP submission?**

Wisconsin provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2015 ozone NAAQS, as applicable. The following review evaluates the State's submission.

### *A. Section 110(a)(2)(A) - Emission limits and other control measures.*

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.<sup>3</sup> In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's

---

<sup>2</sup> See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (Aug. 30, 2018).

<sup>3</sup> See, e.g., EPA's final rule on "National Ambient Air Quality Standards for Lead." 73 FR 66964 at 67034.

SIP has basic structural provisions for the implementation of the NAAQS.

Under Wisconsin Statutes (*Wis. Stats.*) 227 and 285, the Wisconsin Department of Natural Resources (WDNR) holds the authority to create new rules and implement existing emission limits and controls. Authority to monitor, update, and implement revisions to Wisconsin's SIP, including revisions to emission limits and control measures as necessary to meet NAAQS, is contained in *Wis. Stats.* 285.11 - 285.19. Authority related to specific pollutants, including the establishment of ambient air quality standards and increments, identification of nonattainment areas, air resource allocations, and performance and emissions standards, is contained in *Wis. Stats.* 285.21 - 285.29.

Specifically, authority for WDNR to create new rules and regulations is found in *Wis. Stats.* 227.11, 285.11, 285.17, and 285.21. *Wis. Stats.* 227.11(2) expressly confers rulemaking authority to an agency. *Wis. Stats.* 285.11(1) and (6) require that WDNR promulgate rules and establish control strategies in order to prepare and implement the SIP for the prevention, abatement, and control of air pollution in Wisconsin. *Wis. Stats.* 285.17(1) requires WDNR to classify sources or categories of sources that may cause or contribute to air pollution, and *Wis. Stats.* 285.21(1) requires that WDNR promulgate ambient air

quality standards that are similar to the NAAQS.

EPA's 2013 Guidance states that to satisfy section 110(a)(2)(A) requirements, "an air agency's submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS, including precursors of the relevant NAAQS pollutant where applicable." WDNR identified existing controls and emission limits in the Wisconsin Administrative Code that can be applied to the 2015 ozone NAAQS. These regulations include controls and emission limits for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>), which are precursors to ozone. VOC as an ozone precursor is regulated by Wisconsin Administrative Code Chapters Natural Resources (NR) 419 - 425, and NO<sub>x</sub> as an ozone precursor is regulated by NR 428.

In this rulemaking, EPA is not proposing to approve any new provisions in NR 419 - 425 or NR 428. EPA is also not proposing to approve or disapprove any existing state provisions or rules related to start-up, shutdown or malfunction or director's discretion in the context of section 110(a)(2)(A). EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2015 ozone NAAQS.

*B. Section 110(a)(2)(B) - Ambient air quality monitoring/data system.*

This section requires SIPs to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and, upon request, make these data available to EPA. EPA's review of a state's annual monitoring plan includes EPA's determination that the state: (i) monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

In accordance with 40 CFR part 53 and 40 CFR part 58, WDNR continues to operate an air monitoring network that is used to determine compliance with the NAAQS. WDNR enters air monitoring data into AQS and provides EPA with prior notification when changes to its monitoring network or plan are being considered. Further, WDNR submits annual monitoring network plans to EPA. On October 2, 2019, EPA approved the State's 2020 Annual Air Monitoring Network Plan, including the plan for ozone. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2015 ozone NAAQS.

*C. Section 110(a)(2)(C) - Program for enforcement of control measures; minor NSR; PSD.*

This section requires SIPs to set forth a program providing for enforcement of all SIP measures, and the regulation of construction of new and modified stationary sources to meet New Source Review (NSR) requirements under Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) programs. Part C of the CAA (sections 160-169B) addresses PSD, while part D of the CAA (sections 171-193) addresses NNSR requirements. EPA's 2013 Guidance states that the NNSR requirements of section 110(a)(2)(C) are generally outside the scope of infrastructure SIPs; however, a state must provide for regulation of minor sources and minor modifications (minor NSR).

1. Program for enforcement of control measures.

A state's infrastructure SIP submission should identify the statutes, regulations, or other provisions in the SIP that provide for enforcement of emission limits and control measures.

WDNR maintains an enforcement program to ensure compliance with SIP requirements. The Bureau of Air Management houses an active statewide compliance and enforcement team that works in all geographic regions of the State. WDNR refers actions as necessary to the Wisconsin Department of Justice with the involvement of WDNR. *Wis. Stats.* 285.83 and *Wis. Stats.* 285.87 provide WDNR with the authority to enforce violations and assess penalties, to ensure that required measures are ultimately implemented. EPA proposes that Wisconsin has met the

enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

## 2. Minor NSR.

An infrastructure SIP submission should identify the existing EPA-approved SIP provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutant.

EPA approved Wisconsin's minor NSR program on January 18, 1995 (60 FR 3543); since that date, WDNR and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. As stated in EPA's 2013 Guidance, the CAA allows EPA to approve infrastructure SIP submissions that do not implement the 2002 NSR Reform Rules. Therefore, EPA is not proposing action on existing NSR Reform regulations for Wisconsin. EPA proposes that Wisconsin has met the minor NSR requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

## 3. PSD.

The evaluation of each state's submission addressing the PSD requirements of section 110(a)(2)(C) covers: (i) PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone

in the PSD program; (ii) identification of precursors to PM<sub>2.5</sub><sup>4</sup> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub><sup>5</sup> condensables in the PSD program; (iii) PM<sub>2.5</sub> increments in the PSD program; and (iv) greenhouse gas (GHG) permitting and the "Tailoring Rule" in the PSD program.<sup>6</sup>

Some PSD requirements under section 110(a)(2)(C) overlap with elements of section 110(a)(2)(D)(i), section 110(a)(2)(E), and section 110(a)(2)(J). These links are discussed in the appropriate areas below.

a. PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone in the PSD program.

EPA's "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

---

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

5 PM<sub>10</sub> refers to particles with an aerodynamic diameter of less than or equal to 10 micrometers.

6 In EPA's April 28, 2011 proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM<sub>2.5</sub> NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for infrastructure SIPs for the 2006 PM<sub>2.5</sub> NAAQS (77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO<sub>x</sub> as a precursor to ozone, PM<sub>2.5</sub> precursors, PM<sub>2.5</sub> and PM<sub>10</sub> condensables, PM<sub>2.5</sub> increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2015 ozone NAAQS.

Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO<sub>x</sub> as a precursor to ozone (70 FR 71612 at 71679, 71699-71700). This requirement was codified in 40 CFR 51.166.<sup>7</sup>

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including provisions specifically identifying NO<sub>x</sub> as a precursor to ozone, by June 15, 2007 (see 70 FR 71612 at 71683, November 29, 2005).

EPA approved revisions to Wisconsin's PSD SIP reflecting these requirements on February 7, 2017 (82 FR 9515), and therefore proposes that Wisconsin has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

b. Identification of precursors to PM<sub>2.5</sub> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub> condensables in the PSD program.

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM<sub>2.5</sub> and other

---

<sup>7</sup> Similar changes were codified in 40 CFR 52.21.

pollutants that contribute to secondary PM<sub>2.5</sub> formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM<sub>2.5</sub>, otherwise known as precursors. In the 2008 rule, EPA identified precursors to PM<sub>2.5</sub> for the PSD program to be sulfur dioxide (SO<sub>2</sub>) and NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to PM<sub>2.5</sub> in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM<sub>2.5</sub> concentrations.

The explicit references to SO<sub>2</sub>, NO<sub>x</sub>, and VOCs as they pertain to secondary PM<sub>2.5</sub> formation are codified at 40 CFR 51.166(b)(49)(i)(b) and 40 CFR 52.21(b)(50)(i)(b). As part of identifying pollutants that are precursors to PM<sub>2.5</sub>, the 2008 NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define "significant" for PM<sub>2.5</sub> to mean the following emissions rates: 10 tons per year (tpy) of direct PM<sub>2.5</sub>; 40 tpy of SO<sub>2</sub>; and 40 tpy of NO<sub>x</sub> (unless

the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (see 73 FR 28321 at 28341, May 16, 2008).<sup>8</sup>

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM<sub>2.5</sub> and PM<sub>10</sub> emission limits in NSR permits. Instead, EPA determined that states had to account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables for applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits beginning on or after January 1,

---

<sup>8</sup> EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM<sub>10</sub> nonattainment areas (Title I, part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council v. EPA*, No. 08-1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's approval of Wisconsin's infrastructure SIP as to elements (C), (D) (i) (II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion. The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were due to EPA by May 16, 2011 (see 73 FR 28321 at 28341, May 16, 2008).

EPA approved revisions to Wisconsin's PSD SIP reflecting these requirements on October 16, 2014 (79 FR 62008), and therefore proposes that Wisconsin has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

c. PM<sub>2.5</sub> increments in the PSD program.

On October 20, 2010, EPA issued the final rule on the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (2010 NSR Rule). This rule established several components for making PSD permitting determinations for PM<sub>2.5</sub>, including a system of "increments" which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

**Table 1: PM<sub>2.5</sub> Increments Established by the 2010 NSR Rule in micrograms per cubic meter**

	Annual	24-hour max
--	--------	-------------

	arithmetic mean	
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new "major source baseline date" for PM<sub>2.5</sub> as October 20, 2010, and a new trigger date for PM<sub>2.5</sub> as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 40 CFR 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR Rule revised the definition of "baseline area" to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM<sub>2.5</sub>. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

EPA approved revisions to Wisconsin's PSD SIP reflecting these requirements on February 7, 2017 (82 FR 9515), and therefore proposes that Wisconsin has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

d. GHG permitting and the "Tailoring Rule" in the PSD program.

With respect to the requirements of section 110(a)(2)(C) as well as section 110(a)(2)(J), EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements

for all regulated NSR pollutants. The requirements of section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating that the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Wisconsin has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Court's decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on

emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or "anyway" sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification."

EPA is planning to take additional steps to revise Federal PSD rules in light of the Supreme Court's opinion and subsequent D.C. Circuit's ruling. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to EPA's PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA's planned actions to revise its PSD program rules in response to the court decisions. For purposes of infrastructure SIP submissions, EPA is only evaluating such submissions to assure

that the state's program addresses GHGs consistent with both court decisions.

At present, EPA has determined the Wisconsin SIP is sufficient to satisfy the requirements of section 110(a)(2)(C), section 110(a)(2)(D)(i)(II), and section 110(a)(2)(J) with respect to GHGs. This is because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits issued to "anyway" sources contain limitations on GHG emissions based on the application of BACT. On August 1, 2018, EPA updated the Wisconsin SIP to include revised PSD rules to reflect both courts' decisions, and preserving PSD permitting requirements for GHGs for "anyway" sources (83 FR 37434).

*D. Section 110(a)(2)(D) - Interstate transport.*

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, or interfering with maintenance, of the NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality, or from interfering with measures required of any other state to protect visibility. Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring

compliance with the applicable requirements of CAA section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

1. Significant contribution to nonattainment.

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

2. Interference with maintenance.

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to interference with maintenance for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

3. Interference with PSD.

EPA notes that Wisconsin's satisfaction of the applicable infrastructure SIP PSD requirements for the 2015 ozone NAAQS has been detailed in the section addressing section 110(a)(2)(C). EPA further notes that the proposed actions in that section related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

EPA has previously approved revisions to Wisconsin's SIP that meet certain requirements obligated by the Phase 2 Rule and

the 2008 NSR Rule. These revisions included provisions that: explicitly identify NO<sub>x</sub> as a precursor to ozone, explicitly identify SO<sub>2</sub> and NO<sub>x</sub> as precursors to PM<sub>2.5</sub>, and regulate condensable PM<sub>2.5</sub> and PM<sub>10</sub> in applicability determinations and for purposes of establishing emission limits. EPA has also previously approved revisions to Wisconsin's SIP that incorporate the PM<sub>2.5</sub> increments and the associated implementation regulations including the major source baseline date, trigger date, and level of significance for PM<sub>2.5</sub> per the 2010 NSR Rule. EPA is proposing that Wisconsin's SIP contains provisions that adequately address the 2015 ozone NAAQS.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Wisconsin's SIP-approved NNSR regulations, specifically in chapter NR 408 of the Wisconsin Administrative Code, are consistent with 40 CFR 51.165, or 40 CFR part 51, appendix S. Therefore, EPA proposes that Wisconsin has met all of the applicable section 110(a)(2)(D)(i)(II) requirements relating to interference with PSD for the 2015 ozone NAAQS.

#### 4. Interference with visibility protection.

Under the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). EPA's 2013 Guidance states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

On August 7, 2012, EPA published its final approval of Wisconsin's regional haze plan (77 FR 46952). Therefore, EPA proposes that Wisconsin has met all the applicable section 110(a)(2)(D)(i)(II) requirements relating to interference with visibility protection for the 2015 ozone NAAQS.

#### 5. Interstate and international pollution abatement.

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 (relating to interstate and international pollution abatement, respectively). Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Wisconsin's EPA-approved portion of its PSD program contains provisions requiring new or modified sources to notify neighboring states of potential negative air quality impacts. Wisconsin's submission references these provisions as being adequate to meet the requirements of section 126(a). Wisconsin has no pending obligations under section 115, and no sources in Wisconsin are the subject of an active finding under section 126. Therefore, EPA proposes that Wisconsin has met all the applicable section 110(a)(2)(D)(ii) requirements for the 2015 ozone NAAQS.

*E. Section 110(a)(2)(E) - Adequate resources; state board requirements.*

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

1. Adequate resources.

To satisfy the adequate resources requirements of section 110(a)(2)(E), the state must provide assurances that its air agency has adequate resources, personnel, and legal authority to implement the relevant NAAQS.

Wisconsin's biennial budget ensures that EPA grant funds as well as state funding appropriations are sufficient to

administer its air quality management program, and WDNR has routinely demonstrated that it retains adequate personnel to administer its air quality management program. Wisconsin's Environmental Performance Partnership Agreement with EPA documents certain funding and personnel levels at WDNR. As discussed in previous sections, basic duties and authorities in the State are outlined in *Wis. Stats.* 285.11. EPA proposes that Wisconsin has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2015 ozone, NAAQS.

## 2. State board requirements.

Section 110(a)(2)(E) also requires each SIP to set forth provisions that comply with the state board requirements of section 128 of the CAA. Section 128 contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under this chapter have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

On July 2, 2015, WDNR submitted rules from *Wis. Stats.* for incorporation into the SIP, pursuant to section 128 of the CAA.

Under *Wis. Stats.* 15.05, the administrative powers and duties of the WDNR, including issuance of permits and enforcement orders, are vested in the Secretary. Therefore, Wisconsin has no further obligations under section 128(a)(1) of the CAA.

Under section 128(a)(2) of the CAA, the head of the executive agency with the power to approve permits or enforcement orders must adequately disclose any potential conflicts of interest. In Wisconsin, this power is vested in the Secretary of the WDNR. *Wis. Stats.* 19.45(2) prevents financial gain of any public official, which addresses the issue of deriving any significant portion of income from persons subject to permits and enforcement orders. Additionally, *Wis. Stats.* 19.46 prevents a public official from taking actions where there is a conflict of interest. As a public official under *Wis. Stats.* 19, the Secretary of the WDNR is subject to these ethical obligations. EPA concludes that WDNR's submission as it relates to the state board requirements under section 128 is consistent with applicable CAA requirements. EPA approved these rules on January 21, 2016 (81 FR 3334). Therefore, EPA is proposing that Wisconsin has satisfied the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2015 ozone NAAQS.

*F. Section 110(a)(2)(F) - Stationary source monitoring system.*

In this rulemaking, EPA is not evaluating section

110(a)(2)(F) requirements relating to stationary source monitoring for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

*G. Section 110(a)(2)(G) - Emergency powers.*

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. EPA's 2013 Guidance states that infrastructure SIP submissions should specify authority, vested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

*Wis. Stats.* 285.85 provides the requirement for WDNR to act upon a finding that an emergency episode or condition exists. The language contained in this chapter authorizes WDNR to seek immediate injunctive relief in circumstances of substantial danger to the environment or to public health. EPA proposes that Wisconsin has met the applicable infrastructure SIP requirements for this portion of section 110(a)(2)(G) with respect to the 2015 ozone NAAQS.

*H. Section 110(a)(2)(H) - Future SIP revisions.*

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, to the availability of improved methods for attaining the NAAQS, or to

an EPA finding that the SIP is substantially inadequate.

*Wis. Stats.* 285.11(6) provides WDNR with the authority to develop all rules, limits, and regulations necessary to meet the NAAQS as they evolve, and to respond to any EPA finding of inadequacy for the overall Wisconsin SIP and air management programs. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2015 ozone NAAQS.

*I. Section 110(a)(2)(I) - Nonattainment planning requirements of part D.*

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA will action on part D attainment plans through separate processes.

*J. Section 110(a)(2)(J) - Consultation with government officials; public notification; PSD; visibility protection.*

The evaluation of the submissions from Wisconsin with respect to the requirements of section 110(a)(2)(J) are described below.

1. Consultation with government officials.

States must provide a process for consultation with local

governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

*Wis. Stats.* 285.13(5) contains the provisions for WDNR to advise, consult, contract, and cooperate with other agencies of the state and local governments, industries, other states, interstate or inter-local agencies, the Federal government, and interested persons or groups during the entire process of SIP revision development and implementation and for other elements regarding air management for which WDNR is the officially charged agency. WDNR's Bureau of Air Management has effectively used formal stakeholder structures in the development and refinement of all SIP revisions. Additionally, Wisconsin is an active member of the Lake Michigan Air Directors Consortium (LADCO), which provides technical assessments and a forum for discussion regarding air quality issues to member states. EPA proposes that Wisconsin has satisfied the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

## 2. Public notification.

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances.

WDNR maintains portions of its website specifically for

issues related to the 2015 ozone NAAQS.<sup>9</sup> Public notification is provided through this website, and through a contracted email subscription service known as "GovDelivery." Information related to monitoring sites is also found on Wisconsin's website, as is the calendar for all public events and public hearings held in the State. EPA proposes that Wisconsin has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

### 3. PSD.

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Wisconsin's PSD program in the context of infrastructure SIPs has already been discussed above in the paragraphs addressing section 110(a)(2)(C) and section 110(a)(2)(D)(i)(II), and EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J).

Therefore, EPA proposes that Wisconsin has met all the infrastructure SIP requirements for PSD associated with section 110(a)(2)(D)(J) for the 2015 ozone NAAQS.

### 4. Visibility protection.

States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections

---

<sup>9</sup> <http://dnr.wi.gov/topic/AirQuality/Ozone.html>

169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2015 ozone NAAQS.

*K. Section 110(a)(2)(K) - Air quality modeling/data.*

SIPs must provide for performance of air quality modeling to predict the effects on air quality from emissions of any NAAQS pollutant and the submission of such data to EPA upon request.

WDNR maintains the capability of performing computer modeling of the air quality impacts of emissions of all criteria pollutants, including both source-oriented and more regionally directed complex photochemical grid models. WDNR collaborates with LADCO, EPA, and other Lake Michigan states in performing modeling. *Wis. Stats. 285.11, Wis. Stats. 285.13, and Wis. Stats. 285.60 - 285.69* authorize WDNR to perform modeling. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2015 ozone NAAQS.

*L. Section 110(a)(2)(L) - Permitting fees.*

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

WDNR implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62951). EPA approved revisions to the program on February 28, 2006 (71 FR 9934). NR 410 contains the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2015 ozone NAAQS. *M. Section 110(a)(2)(M) - Consultation/participation by affected local entities.*

States must consult with and allow participation from local political subdivisions affected by the SIP.

In addition to the measures outlined in the paragraph addressing WDNR's submittals regarding consultation requirements of section 110(a)(2)(J), as contained in *Wis. Stats.* 285.13(5), the State follows a formal public hearing process in the development and adoption of all SIP revisions that entail new or revised control programs or strategies and targets. For SIP revisions covering more than one source, WDNR is required to provide the standing committees of the state legislature with jurisdiction over environmental matters with a 60-day review

period to ensure that local entities have been properly engaged in the development process. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2015 ozone NAAQS.

**III. What action is EPA taking?**

EPA is proposing to approve most elements of a submission from Wisconsin certifying that its current SIP is sufficient to meet the required infrastructure elements under section 110(a)(1) and (2) for the 2015 ozone NAAQS.

EPA's proposed actions for the State's satisfaction of infrastructure SIP requirements pursuant to section 110(a)(2) and NAAQS are contained in the table below.

Element	2015 Ozone
(A) - Emission limits and other control measures.	A
(B) - Ambient air quality monitoring/data system.	A
(C)1 - Program for enforcement of control measures.	A
(C)2 - Minor NSR.	A
(C)3 - PSD.	A
(D)1 - I Prong 1: Interstate transport - significant contribution to nonattainment.	NA
(D)2 - I Prong 2: Interstate transport - interference with maintenance.	NA
(D)3 - II Prong 3: Interstate transport - interference with PSD.	A
(D)4 - II Prong 4: Interstate transport - interference with visibility protection.	A
(D)5 - Interstate and international pollution abatement.	A
(E)1 - Adequate resources.	A
(E)2 - State board requirements.	A
(F) - Stationary source monitoring system.	NA
(G) - Emergency powers.	A
(H) - Future SIP revisions.	A

(I) - Nonattainment planning requirements of part D.	*
(J)1 - Consultation with government officials.	A
(J)2 - Public notification.	A
(J)3 - PSD.	A
(J)4 - Visibility protection.	*
(K) - Air quality modeling/data.	A
(L) - Permitting fees.	A
(M) - Consultation/participation by affected local entities.	A

In the above table, the key is as follows:

A	Approve
NA	No Action / Separate Rulemaking
*	Not germane to infrastructure SIPs

#### **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 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;
- 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).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 10, 2020.

Cheryl Newton,  
Deputy Regional Administrator, Region 5.

[FR Doc. 2020-20516 Filed: 9/29/2020 8:45 am; Publication Date: 9/30/2020]