



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2020-0467; FRL-10020-71-Region 5]

**Air Plan Approval; Illinois; Public Participation in the Permit
Program**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Illinois State Implementation Plan (SIP) that were submitted on August 27, 2020 by the Illinois Environmental Protection Agency (IEPA). These revisions affect the public notice rule provisions for the New Source Review (NSR) and title V Operating Permit programs (title V) of the Clean Air Act (CAA). The revisions remove the mandatory requirement to provide public notice of draft CAA permits in a newspaper and allow electronic notice (e-notice) as an alternate noticing option. EPA is proposing to approve these revisions pursuant to the CAA and implementing Federal regulations.

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-2020-0467 at <http://www.regulations.gov>, or via email to damico.genevieve@epa.gov. For comments submitted at [Regulations.gov](http://www.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: Daniel Wolski, Physical Scientist, Air Permitting Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0557, wolski.daniel@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background

On October 5, 2016, EPA finalized revised public notice rule provisions for the NSR, title V, and Outer Continental Shelf permitting programs of the CAA. See 81 FR 71613 (October 18, 2016). These rule provisions remove the mandatory requirement to provide public notice of a draft air permit through publication in a newspaper and allow for internet e-notice as an option for permitting authorities implementing their own EPA-approved SIP rules and title V rules. Permitting authorities are not required to adopt e-notice. A permitting authority with an EPA-approved permitting program, such as IEPA, may continue to use newspaper notification or supplement e-notice with newspaper notification or additional means of notification. When e-notice is provided, EPA's rule requires electronic access (e-access) to the draft permit. Generally, state and local agencies are expected to post the draft permits and public notices in a designated location on their agency websites. For the noticing of draft permits issued by permitting authorities with EPA-approved programs, the rule requires the permitting authority to use "a consistent noticing method" for all permit notices under the specific permitting program. Permitting authorities must also provide the public with reasonable access to the other materials that support the permit decision (e.g. the permit application, statement of basis, fact sheet, preliminary determination, final determination and response to comments) as required by existing regulations, however such materials which comprise the permit

record may be provided either electronically, at a physical location, or a combination of both.

EPA anticipates that e-notice, which is already being practiced by many permitting authorities, will enable permitting authorities to communicate permitting and other affected actions to the public more quickly and efficiently and will provide cost savings over newspaper publication. EPA further anticipates that e-access will expand access to permit-related documents. A full description of the e-notice and e-access provisions are contained in EPA's October 18, 2016, rulemaking (81 FR 71613).

II. Analysis of Illinois' E-Notice Rule Revisions

IEPA revised Chapter 35 Illinois Administrative Code (IAC) part 252, *Public Participation in the Air Pollution Control Permit Program*, to incorporate EPA's amendments to the Federal public notice regulations discussed above. Specifically, IEPA revised 35 IAC 252 section 201, "Notice and Opportunity to Comment" and section 204, "Availability of Documents". IEPA's revisions to 35 IAC 252 section 201 add language to allow for the use of e-notice for certain air permit hearings, including those regarding major stationary source construction and modification (IEPA's nonattainment NSR program), CAA Permit Program permits (IEPA's title V program), and others, by providing notice to the public by prominent placement at a dedicated page on IEPA's website. Revisions to part 252 section 204 specify the location of certain permitting documents and allow a copy of the draft permit to be placed on a dedicated

page on IEPA's website for the duration of the public comment period.

IEPA's regulations were the subject of a public hearing on January 11, 2018 and were adopted on August 17, 2018 with an effective date of August 1, 2018. EPA received IEPA's SIP submittal on August 27, 2020. Based on a review of the proposed revisions, EPA has preliminarily determined that IEPA's revisions meet the requirements of the Federal e-notice provisions¹.

III. What Action is EPA Taking?

EPA is proposing to approve IEPA's August 27, 2020 SIP program revisions addressing public notice requirements for CAA permitting. EPA has preliminarily concluded that the State's submittal meets the plan revisions requirements of CAA section 110 and the implementing regulations at 40 CFR 51.161, 40 CFR 70.4 and 70.7.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to 35 IAC part 252 section 201 "Notice and Opportunity to Comment" and section 204, "Availability of Documents", effective August 1, 2018. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5

¹IEPA has submitted additional SIP revision requests which will impact part 252. These submittals will be the subject of forthcoming EPA actions.

Office (please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT**" section of this preamble for more information).

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. 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 it is not a significant regulatory action 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,
Administrative practice and procedure, Incorporation by
reference, Intergovernmental relations, Operating permits,
Reporting and recordkeeping requirements.

Dated: February 22, 2021

Cheryl Newton,
Acting Regional Administrator, Region 5.

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