



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2019-0215; FRL-13010-02-R5]

**Air Plan Approval; Michigan; Infrastructure SIP Requirements for
the 2015 Ozone NAAQS; Michigan State Board Requirements**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving an element of a State Implementation Plan (SIP) submission from Michigan 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 ensure that the structural components of each State's air quality management program are adequate to meet CAA requirements. This action pertains to CAA section 110(a)(2)(E)(ii).

DATES: This direct final rule will be effective **[Insert date 60 days after date of publication in the *Federal Register*]**, unless EPA receives adverse comments by **[Insert date 30 days after date of publication in the *Federal Register*]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2019-0215 at <https://www.regulations.gov> or via

email to langman.michael@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), 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, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kelsey Foss, Air and Radiation Division (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6008, foss.kelsey@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.

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

I. Background.

A. What State SIP submission does this rulemaking address?

This rulemaking addresses a March 8, 2019, submission from the Michigan Department of Environment, Great Lakes, and Energy (Michigan or EGLE) that meets the infrastructure requirements for the 2015 ozone NAAQS. EPA has already acted on all other elements of Michigan’s infrastructure SIP for the 2015 ozone NAAQS except for this element pertaining to State boards.

B. Why did the State make this 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 particular 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 a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.¹

¹ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastucture_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in

Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates a State's SIP revision for facial compliance with statutory and regulatory requirements, not for the State's implementation of its SIP.² 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 the State's submission?

CAA section 110(a)(2)(E)(ii) requires that each SIP contain provisions that comply with the State board requirements of CAA section 128. Section 128(a) contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under the CAA shall 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 the CAA, and (2) 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.

EPA did not act on this portion of Michigan's March 8, 2019, SIP submission because Michigan had recently created State boards,³ and EPA needed time to assess which rules applied to the

numerous agency actions, including EPA's prior action on Michigan's, Illinois', Minnesota's, and Wisconsin's infrastructure SIPs to address the 2008 lead NAAQS (79 FR 27241 (May 13, 2014)).

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

³ Michigan Public Act 267 of 2018 created the Environmental Rules Review Committee. Public Act 267 is available at

boards. These State boards have since been abolished.⁴

Because Michigan no longer has State boards, CAA section 128(a)(1) does not apply to Michigan. Michigan Civil Service Commission Rule 2-8.3(a)(1) is already contained in Michigan's SIP and fulfills the conflict of interest disclosure requirement of CAA section 128(a)(2). Thus, EPA finds that Michigan's infrastructure SIP meets the requirement of CAA section 110(a)(2)(E)(ii) for the 2015 ozone NAAQS.

III. What action is EPA taking?

EPA is approving Michigan's March 8, 2019, submission as satisfying the requirement of CAA section 110(a)(2)(E)(ii) for the 2015 ozone NAAQS.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this *Federal Register* publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective **[Insert date 60 days after date of publication in the *Federal Register*]** without further notice

<https://www.legislature.mi.gov/Bills/Bill?ObjectName=2017-SB-0652>. Michigan Public Act 268 of 2018 created the Environmental Permit Review Commission. Public Act 268 is available at

<https://www.legislature.mi.gov/Bills/Bill?ObjectName=2017-SB-0653>. Public Acts 267 and 268 were filed and effective on June 29, 2018.

⁴ Michigan Executive Order 2024-5, published July 18, 2024, and effective September 17, 2024, abolished the Environmental Rules Review Committee and the Environmental Permit Review Commission. According to Executive Order 2024-5, the authority to hear permit review appeals and to approve permits lies wholly with the Director of EGLE or the Director's designee. Executive Order 2024-5 is available at <https://www.michigan.gov/whitmer/news/state-orders-and-directives/2024/07/18/executive-order-2024-5-executive-reorganization>.

unless we receive relevant adverse written comments by **[Insert date 30 days after date of publication in the *Federal Register*]**.

If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[Insert date 60 days after date of publication in the *Federal Register*]**.

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 Order 12866 (58 FR 51735, October 4, 1993);

- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

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).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this *Federal Register*, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section

307(b) (2) .)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: November 3, 2025.

Anne Vogel,
Regional Administrator, Region 5.

For the reasons stated in the preamble, title 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 § 52.1170, the table in paragraph (e) is amended under the heading “Infrastructure,” by revising the entry for “Section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS” to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
* * * * *				
Infrastructure				
* * * * *				
Section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS	Statewide	3/8/2019	[Insert date of publication in the <i>Federal Register</i> , 90 FR [Insert <i>Federal Register</i> page where the document begins]	Approved CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) Prong 3, D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Disapproved CAA elements: 110(a)(2)(D)(i)(I) Prongs 1 and 2, and 110(a)(2)(D)(i)(II) Prong 4.
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