

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 October 30, 2020.

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. 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](http://www.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>.

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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).¹ 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 the submitting state's SIP 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.

¹ 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), 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_{2.5}) NAAQS (81 FR 95043 (December 27, 2016)).

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).

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.³ 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 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.

³ See, *e.g.*, EPA's final rule on “National Ambient Air Quality Standards for Lead.” 73 FR 66964 at 67034.

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_x), which are precursors to ozone. VOC as an ozone precursor is regulated by Wisconsin Administrative Code Chapters Natural Resources (NR) 419–425, and NO_x 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_x as a precursor to ozone in the PSD program; (ii) identification of precursors to PM_{2.5}⁴ and the identification of PM_{2.5} and PM₁₀⁵ condensables in the PSD program; (iii) PM_{2.5} increments in the PSD program; and (iv) greenhouse gas (GHG) permitting and the "Tailoring Rule" in the PSD program.⁶

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_x 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 Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005

⁴PM_{2.5} refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, also referred to as "fine" particles.

⁵PM₁₀ refers to particles with an aerodynamic diameter of less than or equal to 10 micrometers.

⁶In EPA's April 28, 2011 proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM_{2.5} 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_{2.5} NAAQS (77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO_x as a precursor to ozone, PM_{2.5} precursors, PM_{2.5} and PM₁₀ condensables, PM_{2.5} 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.

(70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_x as a precursor to ozone (70 FR 71612 at 71679, 71699–71700). This requirement was codified in 40 CFR 51.166.⁷

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including provisions specifically identifying NO_x 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_{2.5} and the Identification of PM_{2.5} and PM₁₀ 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_{2.5})” (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM_{2.5} and other pollutants that contribute to secondary PM_{2.5} formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM_{2.5}, otherwise known as precursors. In the 2008 rule, EPA identified precursors to PM_{2.5} for the PSD program to be sulfur dioxide (SO₂) and NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to PM_{2.5} 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_{2.5} concentrations.

The explicit references to SO₂, NO_x, and VOCs as they pertain to secondary PM_{2.5} 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_{2.5}, 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_{2.5} to mean the following emissions rates: 10 tons per year (tpy) of direct PM_{2.5}; 40 tpy of SO₂; and 40 tpy of NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} 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).⁸

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_{2.5} and PM₁₀ emission limits in NSR permits. Instead, EPA determined that states had to account for PM_{2.5} and PM₁₀ condensables for applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in PSD permits beginning on or after January 1, 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

⁸ 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 PM₁₀ 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_{2.5} 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.

Wisconsin has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

c. PM_{2.5} 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_{2.5})—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_{2.5}, 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_{2.5} INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER CUBIC METER

	Annual arithmetic mean	24-Hour max
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_{2.5} as October 20, 2010, and a new trigger date for PM_{2.5} 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_{2.5}. 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

⁷ Similar changes were codified in 40 CFR 52.21.

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_x as a precursor to ozone, explicitly identify SO₂ and NO_x as precursors to PM_{2.5}, and regulate condensable PM_{2.5} and PM₁₀ in applicability determinations and for purposes of establishing emission limits. EPA has also previously approved revisions to Wisconsin's SIP that incorporate the PM_{2.5} increments and the associated implementation regulations including the major source baseline date, trigger date, and level of significance for PM_{2.5} 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.⁹ 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 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

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

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 (Pub. L. 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 9–29–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2020–0486; FRL–10015–26–OW]

Microbial and Disinfection Byproducts Rules: Public Meeting To Inform Potential Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Safe Drinking Water Act (SDWA) requires the U.S. Environmental Protection Agency (EPA) to review each national primary drinking water regulation (NPDWR) at least once every six years. As part of the “Six-Year Review”, EPA evaluates any newly available data, information, and technologies to determine if any regulatory revisions are needed. During the Agency’s third Six-Year Review (Six-Year Review 3) eight NPDWRs were identified as candidates for potential regulatory revision. EPA is hosting a public meeting on October 14 and 15, 2020, to seek public input on the Agency’s potential regulatory revisions of these eight NPDWRs including: Chlorite, *Cryptosporidium*, Haloacetic acids, Heterotrophic bacteria, *Giardia lamblia*, *Legionella*, Total Trihalomethanes, and Viruses. The eight NPDWRs are included in the following Microbial and Disinfection Byproduct (MDBP) rules: Stage 1 and Stage 2 Disinfectants and Disinfection Byproducts Rules, Surface Water Treatment Rule, Interim Enhanced Surface Water Treatment Rule, and Long Term 1 Enhanced Surface Water Treatment Rule. At this meeting, EPA is seeking public input on information and perspectives related to the potential regulatory revisions. EPA will consider the data and/or information discussed at this meeting, as well as at future stakeholder engagements, in its determination on whether a rulemaking to revise any MDBP regulations should be initiated. For more information on the meeting visit the EPA’s Revisions of the MDBP Rules website: www.epa.gov/dwsixyearreview/revisions-microbial-and-disinfection-byproducts-rules and go to the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: The public meetings will be held on Wednesday, October 14, 2020 (11 a.m. to 5 p.m., Eastern Time), and Thursday, October 15, 2020 (11 a.m. to 4:30 p.m., Eastern Time).

ADDRESSES: The public meetings will be held in an online-only format in the *Online Meeting* section of this document.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Ashley Greene, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460 at (202) 566–1738 or greenegreene.ashley@epa.gov. For more information about the MDBP revisions or the Six-Year Review process, visit: www.epa.gov/dwsixyearreview/revisions-microbial-and-disinfection-byproducts-rules or www.epa.gov/dwsixyearreview, respectively.

SUPPLEMENTARY INFORMATION:

Registration: Individuals planning to participate in the online public meeting must register at this website www.epa.gov/dwsixyearreview/public-meeting-revisions-microbial-and-disinfection-products-rules no later than October 12, 2020. EPA will do its best to include all those interested, however, may need to limit attendance due to web conferencing size limitations and, therefore, urges potential attendees to register early. Please check the MDBP website for event materials as they become available, including a full meeting agenda and other meeting materials. Web conferencing meeting details will be emailed to registered participants in advance of the meeting. If you have any difficulty registering or have additional questions or comments about the public meeting, please email (MDBPRevisions@epa.gov).

Special Accommodations: For information on access or accommodations for individuals with disabilities, please contact Ashley Greene at (202) 566–1738 or by email at greenegreene.ashley@epa.gov. Please allow at least five business days prior to the meeting to give EPA time to process your request.

Online Meeting: This online meeting will be open to the public and EPA encourages input and will provide opportunities for public engagement. Additionally, the public will have the opportunity to provide written public input. If you are unable to participate in the meetings, you will be able to submit comments at www.regulations.gov, Docket ID No. EPA–HQ–OW–2020–0486. Meeting attendees are also encouraged to send written statements

to the public docket, as well as any scientific data they would like EPA to consider during its analysis of potential regulatory revisions. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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 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 outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, 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>.

The Microbial and Disinfection Byproduct (MDBP) Rules: MDBP rules are a series of interrelated regulations that address risks from microbial pathogens and disinfectants/disinfection byproducts in drinking water. The purpose of the Surface Water Treatment Rules (SWTRs) within the scope of the potential regulatory revisions, including the Surface Water Treatment Rule (40 CFR 141.70–141.75; June 5, 1989), Interim Enhanced Surface Water Treatment Rule (40 CFR 141.170–141.175; December 16, 1998), and Long Term 1 Enhanced Surface Water Treatment Rule (40 CFR 141.500–141.571; January 5, 2002), are to reduce disease incidence associated with pathogens, including *Cryptosporidium*, *Giardia lamblia*, *Legionella*, and viruses in drinking water. The SWTRs require PWS to filter and disinfect surface water sources to provide protection from microbial pathogens. The purpose of the Stage 1 and Stage 2 Disinfectants and Disinfection Byproducts Rules (63 FR 69390; December 16, 1998 and 71 FR 388; January 3, 2006, respectively) are to reduce drinking water exposure to disinfection byproducts which can form in water when disinfectants used to control microbial pathogens react with naturally occurring materials found in source water. If consumed in excess of EPA’s standard over many years, disinfection byproducts may increase health risks. On January 11, 2017 (82 FR 3518; January 11, 2017) EPA identified these MDBP rules as candidates for