

*Consultations With Tribal Governments*

The Department has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

*Paperwork Reduction Act*

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects in 22 CFR Part 52**

Authentication of marriage, Marriage and divorce, Marriage laws.

■ Accordingly, under the authority of 22 U.S.C. 2651a, and because the statutory authority for Part 52 has been repealed, 22 CFR Chapter I, Subchapter F is amended by removing Part 52.

Dated: October 2, 2012.

**Janice L. Jacobs,**

*Assistant Secretary, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2012-26554 Filed 10-26-12; 8:45 am]

**BILLING CODE 4710-06-P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket No. USCG-2011-0228]

RIN 1625-AA00

**Safety Zone, Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at various times on November 14, 2012. This action is necessary to protect the waterways, waterway users, and vessels from hazards associated with the Illinois Department of Natural Resources netting and electro-fishing clearing operation.

During any of the below listed enforcement periods, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

**DATES:** The regulations in 33 CFR 165.930 will be enforced from 7:00 a.m. to 11:00 a.m. and from 1:00 p.m. to 5:00 p.m. on November 14, 2012.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, telephone 414-747-7148, email address *Joseph.p.Mccollum@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone between Mile Marker 296.1 to Mile Marker 296.7 on all waters of the Chicago Sanitary and Ship Canal. Enforcement will occur from 7:00 a.m. until 11:00 a.m. and 1:00 p.m. until 5:00 p.m. on November 14, 2012.

This enforcement action is necessary because the Captain of the Port, Sector Lake Michigan has determined that the Illinois Department of Natural Resources netting and electro-fishing clearing operation poses risks to life and property. The passage of vessel traffic during the same time as the Operation makes the controlling of vessels through the impacted portion of the Chicago Sanitary and Ship Canal necessary to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Sector Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice.

Additionally, the Captain of the Port, Sector Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: October 11, 2012.

**M.W. Sibley,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.*

[FR Doc. 2012-26489 Filed 10-26-12; 8:45 am]

**BILLING CODE 9110-04-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R05-OAR-2009-0805; EPA-R05-OAR-2012-0567; FRL-9742-4]

**Approval and Promulgation of Air Quality Implementation Plans; Illinois; Indiana; Michigan; Minnesota; Ohio; Wisconsin; Infrastructure SIP Requirements for the 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards; Indiana NSR/PSD**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve most elements, and disapprove narrow portions of other elements, of State Implementation Plan (SIP) submissions by Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin regarding the infrastructure requirements of the Clean Air Act (CAA) for the 2006 24-hour fine particle national ambient air quality standards (2006 PM<sub>2.5</sub> 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. EPA is also taking final action to approve portions of a submission from Indiana addressing EPA's requirements for its new source review (NSR) and prevention of significant deterioration (PSD) program. The proposed rulemaking was published on August 2, 2012. During the comment period, which ended on September 4, 2012, EPA received five comment letters. The concerns raised in these letters, as well as EPA's responses, will be addressed in this final action.

**DATES:** This final rule is effective on November 28, 2012.

**ADDRESSES:** EPA has established two dockets for this action under Docket ID No. EPA-R05-OAR-2009-0805 (infrastructure SIP elements for all Region 5 States) and EPA-R05-OAR-

2012–0567 (Indiana NSR/PSD elements). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang at (312) 886–0258 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**

Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, [chang.andy@epa.gov](mailto:chang.andy@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 these SIP submissions?
  - A. What State SIP submissions does this rulemaking address?
  - B. Why did the States make these SIP submissions?
  - C. What is the scope of this rulemaking?
- II. What is our response to comments received on the proposed rulemaking?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

**I. What is the background of these SIP submissions?**

*A. What State SIP submissions does this rulemaking address?*

This rulemaking addresses submissions from each State (and appropriate State agency) in EPA Region 5: Illinois Environmental Protection Agency (Illinois EPA); Indiana Department of Environmental Management (IDEM); Michigan Department of Environmental Quality (MDEQ); Minnesota Pollution Control Agency (MPCA); Ohio Environmental Protection Agency (Ohio EPA); and Wisconsin Department of Natural Resources Bureau of Air Management (WDNR). Each Region 5 State made SIP submissions on the following dates:

Illinois—August 9, 2011, and supplemented on August 25, 2011, and June 27, 2012; Indiana—October 20, 2009, and supplemented on June 25, 2012, and July 12, 2012; Michigan—August 15, 2011, and supplemented on July 9, 2012; Minnesota—May 23, 2011, and supplemented on June 27, 2012; Ohio—September 4, 2009, and supplemented on June 3, 2011, and July 5, 2012; and, Wisconsin—January 24, 2011, and supplemented on March 28, 2011, and June 29, 2012.<sup>1</sup>

Indiana also made a SIP submission intended to address various EPA requirements for its NSR and PSD programs. IDEM submitted revisions on July 12, 2012, for incorporation into its NSR and PSD program, and also requested that EPA approve these revisions as satisfying any applicable infrastructure SIP requirements for the 2006 PM<sub>2.5</sub> NAAQS.

*B. Why did the States make these SIP submissions?*

Under sections 110(a)(1) and (2) of the CAA, and implementing EPA policy, the States are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2006 PM<sub>2.5</sub> NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for particulate matter already met those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 PM<sub>2.5</sub> NAAQS entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)” (2009 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of sections 110(a)(1) and (2) of the CAA. The SIP submissions from the six Region 5 States being evaluated here address primarily the 2006 PM<sub>2.5</sub> NAAQS, with a narrow evaluation of the 1997 8-hour ozone

<sup>1</sup> WDNR noted in a comment letter that its initial infrastructure SIP submission was dated December 12, 2007. EPA observes, however, that the December 12, 2007, submission by WDNR only addresses the 1997 8-hour ground level ozone and 1997 PM<sub>2.5</sub> NAAQS, and not the 2006 PM<sub>2.5</sub> NAAQS.

NAAQS; this final rulemaking addresses only these pollutants as well.<sup>2</sup>

*C. What is the scope of this rulemaking?*

As originally detailed in the proposed rulemaking, the applicable infrastructure SIP requirements are contained in section 110(a)(1) and (2) of the CAA. EPA is finalizing action of each Region 5 State’s satisfaction of the applicable requirements of section 110(a)(2)(A) through section 110(a)(2)(M), except for the elements detailed in the following paragraphs.

This rulemaking will not cover four substantive areas that are not integral to acting on a State’s infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA’s policies addressing such excess emissions (“SSM”); (ii) existing provisions related to “director’s variance” or “director’s discretion” that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (“director’s discretion”); (iii) existing provisions for minor source NSR programs that may be inconsistent with the requirements of the CAA and EPA’s regulations that pertain to such programs (“minor source NSR”); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA’s “Final NSR Improvement Rule,” 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (“NSR Reform”). Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive areas are not part of the scope of infrastructure SIP rulemakings can be found in EPA’s July 13, 2011, final rule entitled, “Infrastructure SIP Requirements for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” in the section entitled, “What is the scope of this final rulemaking?” (see 76 FR 41075 at 41076–41079).

In addition to the four substantive areas above, EPA is not acting in this action on portions of section 110(a)(2)(D)(i)(I)—Interstate transport; section 110(a)(2)(E)(ii)—Adequate resources; and section 110(a)(2)(J)—Consultation with government officials,

<sup>2</sup> On June 14, 2012, the EPA Administrator signed a proposed rule that would strengthen various aspects of the existing PM<sub>2.5</sub> NAAQS (see 77 FR 38890). The State submittals and EPA’s rulemaking do not extend to these proposed NAAQS.

public notifications, PSD, and visibility protection. EPA stated in our proposed rulemaking that we were not proposing to act on the portion of any Region 5 State's submission intended to address the interstate transport requirements of section 110(a)(2)(D)(i)(I) (*see* 77 FR 45992 at 46000), nor were we proposing to approve or disapprove each Region 5 State's satisfaction of the state board requirements of section 110(a)(2)(E)(ii) (*see* 77 FR 45992 at 46002). We have previously finalized our rulemaking for the interstate transport requirements for Indiana and Ohio (*see* FR 43175), and we have yet to take action on the section 110(a)(2)(D)(i)(I) portion of the SIP submissions from Illinois, Michigan, Minnesota, and Wisconsin. We will also take action on compliance with section 110(a)(2)(E)(ii) for Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin at a later time. EPA is working with each of the Region 5 States to address these requirements in the most appropriate way.

With respect to the visibility protection requirements of section 110(a)(2)(J), EPA notes that these requirements are different from those in section 110(a)(2)(D)(i)(II) in that the visibility protection requirements of section 110(a)(2)(J) are not "triggered" by the promulgation of a new or updated NAAQS. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2006 PM<sub>2.5</sub> NAAQS. EPA realizes that our proposed rulemaking may have engendered confusion with respect to section 110(a)(2)(J) (*see* 77 FR 45992 at 46005), and we want to clarify in this final action that the visibility protection requirements of section 110(a)(2)(J) are not germane to the infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS. EPA is also not acting on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. Instead, EPA takes action on part D attainment plans through separate processes.

Furthermore, as a result of the current status of the Cross-State Air Pollution Rule (CSAPR),<sup>3</sup> EPA is not finalizing action on portions of the interstate transport requirements for addressing visibility protection of section 110(a)(2)(D)(i)(II) for certain Region 5 States where we had previously proposed approval; the reasoning can be found in the following section.

<sup>3</sup> *See* <http://epa.gov/airtransport/>. Notably, the Court of Appeals for the D.C. Circuit issued an opinion vacating CSAPR on August 21, 2012, and ordering EPA to continue administering the Clean Air Interstate Rule.

We are also not finalizing our action on narrow portions of Michigan's infrastructure SIP for section 110(a)(2)(C), section 110(a)(2)(D)(i)(II), and section 110(a)(2)(J), specifically with respect to the applicable requirements obligated by EPA's final rule for 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) (*see* 73 FR 28321) and the "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) (*see* 70 FR 71612). On September 4, 2012, MDEQ submitted a comment letter to EPA that requires more evaluation; the specific issues are described in the following section.

Lastly, as a result of a comment received during the comment period, EPA is not finalizing action on a narrow portion of Indiana's infrastructure SIP for section 110(a)(2)(C), section 110(a)(2)(D)(i)(II), and section 110(a)(2)(J), specifically for the source impact analysis requirements of the State's PSD program as it relates to the 2006 PM<sub>2.5</sub> NAAQS; the specific issues are described in the following section.

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

The public comment period for EPA's proposed action to approve most elements and disapprove narrow portions of other elements of submissions from the Region 5 States closed on September 4, 2012. EPA received five comment letters, and a synopsis of the significant individual comments contained in these letters, as well as EPA's response to each comment, is discussed below.

*Comment 1:* A comment letter was submitted on behalf of the Ohio Utility Group (OUG) and its member companies. While OUG generally supported EPA's proposed actions with respect to Ohio's infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS, the group recommended that EPA withdraw its prior disapproval of the portions of Ohio's infrastructure SIP addressing the interstate transport requirements of section 110(a)(2)(D)(i)(I) (*see* 76 FR 43175). Instead, OUG stated that it was EPA's intent to implement a Federal Implementation Plan (FIP) in Ohio to meet these requirements, and that the finalized CSAPR was published in the

**Federal Register** on August 8, 2011 (*see* 76 FR 48208), as a FIP that would simultaneously remedy and replace the Clean Air Interstate Rule (CAIR). OUG noted that CSAPR was stayed by the U.S. Court of Appeals for the District of Columbia Circuit pending judicial review on December 31, 2011, and that the court also ordered EPA to continue administering CAIR. OUG further noted that on August 21, 2012, the court vacated and remanded CSAPR back to EPA, and again ordered EPA to continue administering CAIR. Therefore, OUG believes that EPA should withdraw its prior disapproval of Ohio's interstate transport SIP, and propose approval of Ohio's submissions intended to address the requirements of section 110(a)(2)(D)(i)(I), making the emission reductions that have already occurred Federally enforceable. Lastly, OUG stated that when EPA issues a new interstate transport rule, EPA can then make a determination that the emission reductions as a result of Ohio's interstate transport SIP are insufficient and require Ohio to develop an updated SIP.

*Response 1:* In EPA's August 2, 2012, proposed rulemaking, we stated that we were not proposing to approve or disapprove any provisions intended to address interstate transport requirements of section 110(a)(2)(D)(i)(I) (*see* 76 FR 45992 at 46000); with respect to Ohio, EPA noted that the disapproval of portions of Ohio's infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS intended to address these requirements was finalized on July 20, 2011, and that the State did not have any SIP submission relevant to section 110(a)(2)(D)(i)(I) for the 2006 PM<sub>2.5</sub> NAAQS pending before the Agency. In other words, OUG's comments are not germane to today's rulemaking.

*Comment 2:* One commenter noted that although EPA had proposed approval for all Region 5 States (except for Michigan) as meeting the visibility protection requirement of section 110(a)(2)(D)(i)(II), the Region 5 States' visibility SIPs relied on CSAPR to satisfy the requirement of Best Available Retrofit Technology (BART) for electric generating units. Since CSAPR has been vacated with CAIR temporarily in place, the commenter asserts that there exists no current and permanent cross state air pollution rule for EPA and the Region 5 States to rely on to satisfy the visibility protection requirements of section 110(a)(2)(D)(i)(II), which includes BART limits for electric generating units. Therefore, EPA must disapprove the portions of infrastructure SIPs intended to address the visibility

protection requirements of section 110(a)(2)(D)(i)(II).

*Response 2:* The 2009 Memo recommends to states that the visibility protection requirements of section 110(a)(2)(D)(i)(II) can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, and an approved SIP addressing regional haze.<sup>4</sup> The commenter is correct in stating that if Region 5 States' regional haze plans relied on CSAPR in the context of BART and electric generating units, the visibility protection requirements of section 110(a)(2)(D)(ii) would not be met because CSAPR has been vacated. However, the commenter is incorrect in his characterization of Illinois' regional haze plan. Specifically, Illinois has two sets of provisions in its SIP rules that meet the BART requirement of electric generating units<sup>5</sup> without relying on CSAPR (or CAIR). EPA's final approval of Illinois' regional haze plan was published on July 6, 2012, (see 76 FR 39943) and affirms that existing provisions in Illinois satisfy the BART requirement.

In today's rulemaking, EPA is not finalizing our proposed approval of the visibility protection requirements of section 110(a)(2)(D)(i)(II) for Indiana, Ohio, Minnesota, and Wisconsin. EPA is also not taking any action on the visibility protection requirements of section 110(a)(2)(D)(i)(II) for Michigan. EPA will take action on these States' SIPs in a separate rulemaking. However, EPA is finalizing approval of Illinois' satisfaction of the visibility protection requirements of section 110(a)(2)(D)(ii) in this rulemaking.

*Comment 3:* The same commenter stated that the Indiana SIP is insufficient for purposes of the State's PSD program for the 2006 PM<sub>2.5</sub> NAAQS. The commenter observes that 326 Indiana Administrative Code (IAC) 2-2-5(a)(1) requires an analysis of a new or modified source's emissions demonstrating that the emissions will not cause or contribute to air pollution in violation of any ambient air quality standard, as designated in 326 IAC 1-3. The language contained in 326 IAC 1-3 explicitly references only the 1997 PM<sub>2.5</sub> NAAQS, and not the 2006 PM<sub>2.5</sub> NAAQS of 35 micrograms per cubic meter. Therefore, a literal read of

Indiana's PSD regulations indicates that a source impact analysis would only need to comply with the 1997 PM<sub>2.5</sub> NAAQS. The commenter did note that 326 IAC 2-1.1-5 contains language that would prohibit issuance of a registration, permit, modification approval, or operating permit revision if issuance would allow a source to cause or contribute to a violation of the NAAQS. 326 IAC 2-1.1-5 is currently not in the SIP, and the language contained therein has not been submitted by Indiana for incorporation into the SIP.

*Response 3:* After evaluating the commenter's points, EPA agrees that the State's EPA-approved PSD SIP contained in 326 IAC 2-2-5(a) only requires a source impact analysis for PM<sub>2.5</sub> to comply with the 1997 PM<sub>2.5</sub> NAAQS, and not the 2006 PM<sub>2.5</sub> NAAQS. 326 IAC 2-2-5(a) states that "The owner or operator of the proposed major stationary source or major modification shall demonstrate that allowable emissions increases in conjunction with all other applicable emissions increases or reductions (including secondary emissions) will not cause or contribute to air pollution in violation of any: (1) Ambient air quality standard, as designated in 326 IAC 1-3, in any air quality control region \* \* \* 326 IAC 1-3-4 contains the ambient air quality standards as they apply in Indiana; the 2006 PM<sub>2.5</sub> NAAQS as codified in 40 CFR 50.13, has not been incorporated into this section. IDEM has informed EPA that the State is in the process of adopting revisions to its SIP, specifically contained in IAC 326 1-3-4, to incorporate the 2006 PM<sub>2.5</sub> NAAQS as codified in 40 CFR 50.13. EPA is therefore not finalizing any action on this narrow portion of section 110(a)(2)(C) for Indiana's infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS; we will address the PSD source impact analysis requirements of section 110(a)(2)(C) for the 2006 PM<sub>2.5</sub> NAAQS in a separate rulemaking. EPA notes that there are also PSD requirements associated with section 110(A)(2)(D)(i)(II) and section 110(a)(2)(J). As a result, we are also not finalizing any action on this narrow portion of section 110(a)(2)(D)(i)(II) and section 110(a)(2)(J) for Indiana's infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS; we will address the same PSD source impact analysis requirements for the 2006 PM<sub>2.5</sub> NAAQS in the same action for section 110(a)(2)(C).

*Comment 4:* The same commenter as above also stated that Wisconsin's PSD SIP does not contain the maximum allowable increases in ambient pollutant concentrations (increments) for PM<sub>2.5</sub>.

The final rule for 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)" requiring states to incorporate increments into their PSD SIPs was published in the **Federal Register** on October 20, 2010 (2010 NSR Rule) (see 75 FR 64864). This requirement was also codified in 40 CFR 51.166(c) and 40 CFR 52.21(c). The 2010 NSR Rule required states to submit revisions to their SIPs addressing this required program element by July 20, 2012 (see 75 FR 64864 at 64898). Therefore, because Wisconsin had not made revisions to its PSD SIP incorporating the increments by the deadline prescribed by the 2010 NSR Rule, EPA must disapprove the appropriate portions of the infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS. The commenter did state that WDNR has applied the appropriate increments when issuing PSD permits.

*Response 4:* The commenter asserts that EPA should now disapprove portions of Wisconsin's infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS because, since the date of EPA's proposal, the deadline for the submission of a SIP revision addressing the PM<sub>2.5</sub> increments has passed. However, pursuant to the 2010 NSR Rule and CAA section 166(b), states were not required to submit a revised SIP addressing the PM<sub>2.5</sub> increments until July 20, 2012. The Agency proposed action on the Wisconsin infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS in a notice signed on July 20, 2012.<sup>6</sup> Therefore, on the date that the proposed rule was signed by the Agency, the PM<sub>2.5</sub> increments were not required to be included in the Wisconsin SIP in order for Wisconsin to meet the PSD requirements of sections 110(a)(2)(C), (D)(i)(II), and (J) of the CAA.

The commenter's concerns relate to the timing of Agency action on collateral, yet related, SIP submissions. These concerns highlight an important overarching question that the EPA has to confront when assessing the various infrastructure SIP submissions addressed in the proposed rule: How to proceed when the timing and sequencing of multiple related SIP submissions impact the ability of the State and the Agency to address certain substantive issues in

<sup>4</sup> EPA notes that the 2009 Memo distinguishes section 110(a)(2)(D)(i)(II) from the visibility element of section 110(a)(2)(J), which EPA believes is not germane in infrastructure SIPs for this NAAQS.

<sup>5</sup> The Combined Pollutant Standards are contained in 35 Illinois Administrative Code 225.233, and the Multi-Pollutant Standards are contained in 35 Illinois Administrative Code 225.293-225.299.

<sup>6</sup> Although the proposed action was published by the **Federal Register** on August 2, 2012, it was signed by the Regional Administrator on July 20, 2012, before the statutory deadline for submission of the SIP revision addressing the PM<sub>2.5</sub> increments had passed.

the infrastructure SIP submission in a reasonable fashion.

It is appropriate for EPA to take into consideration the timing and sequence of related SIP submissions as part of determining what it is reasonable to expect a State to have addressed in an infrastructure SIP submission for a NAAQS at the time when the EPA acts on such submission. EPA has historically interpreted section 110(a)(2)(C), section 110(a)(2)(D)(i)(II), and section 110(a)(2)(J) to require us to assess a State's infrastructure SIP submission with respect to the then-applicable and Federally enforceable PSD regulations required to be included in a State's SIP at the time EPA takes action on the SIP.

However, EPA does not consider it reasonable to interpret section 110(a)(2)(C), section 110(D)(i)(II), and section 110(a)(2)(J) to require us to propose to disapprove a State's infrastructure SIP submissions because the State had not yet, at the time of proposal, made a submission that was not yet due for the 2010 PM<sub>2.5</sub> NSR Rule. To adopt a different approach by which EPA could not act on an infrastructure SIP, or at least could not approve an infrastructure SIP, whenever there was any impending revision to the SIP required by another collateral rulemaking action would result in regulatory gridlock and make it impracticable or impossible for EPA to act on infrastructure SIPs if EPA is in the process of revising collateral PSD regulations. EPA believes that such an outcome would be an unreasonable reading of the statutory process for the infrastructure SIPs contemplated in section 110(a)(1) and (2).

EPA acknowledges that it is important that these additional PSD program revisions be evaluated and approved into the State's SIP in accordance with the CAA, and EPA intends to address the PM<sub>2.5</sub> increments in a subsequent rulemaking. EPA appreciates the commenter's point that Wisconsin has been applying the appropriate increments consistent with the requirements codified in 40 CFR 52.21(c), and we will actively work with the State to ensure that these increments are correctly evaluated in permitting decisions. Furthermore, we will work with Wisconsin to ensure that revisions to its SIP incorporating these increments will be wholly consistent with the requirements obligated by the 2010 NSR Rule, as codified in 40 CFR 51.166(c) and 40 CFR 52.21(c).

*Comment 5:* The same commenter as above agreed with EPA's proposed disapproval of portions of Wisconsin's infrastructure SIP for the 2006 PM<sub>2.5</sub>

NAAQS with respect to the explicit identification and regulation of condensable PM<sub>2.5</sub> and PM<sub>10</sub> in its PSD program.<sup>7</sup> Wisconsin's existing SIP contained in Wisconsin Administrative Code NR 400.02(123e)—NR 400.02(124) does not contain the explicit references to condensables in PM<sub>2.5</sub> and PM<sub>10</sub> emissions, as obligated by the 2008 NSR Rule. Furthermore, revisions to its PSD program submitted by WDNR on May 11, 2011, do not contain the explicit identification or regulation of PM<sub>2.5</sub> and PM<sub>10</sub> condensables. However, the commenter notes that WDNR has been including condensable fraction of particulate matter in permits for facilities for many years, as alluded to in NR 415.09. The commenter suggests that EPA clarify that a final disapproval of Wisconsin's infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS with respect to the explicit identification and regulation of PM<sub>2.5</sub> and PM<sub>10</sub> condensables does "not negate or otherwise undermine the fact that all limits in all existing permits in Wisconsin already include condensable PM."

*Response 5:* EPA appreciates the commenter's point that WDNR has historically considered some condensable PM in its permits. The SIP-approved portions of NR 415.09 include references to condensable particulate matter, as defined in NR 439.02(4). NR 439 contains the requirements for reporting, recordkeeping, testing, inspection, and determination of compliance for air contaminant sources and their owners and operators. Specifically, NR 439.02(4) defines "condensable[sic] particulate matter" as "any material, except uncombined water, that may not be collected in the front half of the particulate emission sampling train but which exists as a solid or liquid at standard conditions." EPA agrees that WDNR has the authority to regulate some condensables, and also agrees with the commenter that a final disapproval of portions of Wisconsin's infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS with respect to the explicit identification and regulation of PM<sub>2.5</sub> and PM<sub>10</sub> condensables does not negate that WDNR has considered some condensable particulate matter in its permits. However, at this point in time, the State has not revised its SIP to contain the required explicit references to condensables that are necessary for purposes of the PSD program, and to make that requirement a Federally enforceable part of the State's SIP. EPA will continue to work with the State to

develop SIP revisions that account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables in applicability determinations and permitting emissions limits, consistent with the 2008 NSR Rule. In the interim, we expect the State to correctly account for these condensables in applicability determinations and permitting emissions limits.

*Comment 6:* MDEQ submitted a comment letter to EPA affirming that the State is adopting revisions to its rules that would be wholly consistent with the required infrastructure SIP requirements obligated by the 2008 NSR Rule and the Phase 2 Rule. MDEQ stated that the necessary revisions would be submitted to EPA imminently for incorporation into the SIP, specifically before the end of 2012, and also included the draft rules reflecting the appropriate revisions. The State urged EPA to issue a conditional approval for the relevant portions of its infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS in lieu of finalizing a narrow disapproval.

*Response 6:* EPA appreciates MDEQ's efforts in adopting revisions to its SIP to be wholly consistent with the required infrastructure SIP requirements obligated by the 2008 NSR Rule and the Phase 2 Rule. In our proposed rulemaking addressing the relevant requirements, EPA noted that the State is in the process of adopting required revisions to its regulations to: Address pollutants responsible for the secondary formation of PM<sub>2.5</sub>, i.e., precursors;<sup>8</sup> account for condensables in PM<sub>2.5</sub> and PM<sub>10</sub> applicability determinations and emission limits in NSR permits; and, explicitly identify oxides of nitrogen (NO<sub>x</sub>) as a precursor to ozone (see FR 77 45995 at 45996–45998). EPA believes that MDEQ's specific commitments, including the revisions in progress specific to the applicable requirements of the 2008 NSR Rule and the Phase 2 Rule, as well as the time frame noted, i.e., prior to the end of 2012, require more evaluation. Therefore, in today's rulemaking, EPA is not finalizing our proposed disapproval of portions of Michigan's infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS with respect to the PSD requirements contained in section

<sup>8</sup>In the 2008 NSR 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 volatile organic compounds (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.

<sup>7</sup>"Condensables" are defined as gases that at ambient temperatures, could condense to form particulate matter.

110(a)(2)(C), section 110(a)(2)(D)(i)(II), and section 110(a)(2)(J) to: Identify the precursors to PM<sub>2.5</sub> consistent with the requirements of the 2008 NSR Rule; account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables in applicability determinations and emissions limits for permits consistent with the 2008 NSR Rule; and, identify NO<sub>x</sub> as a precursor to ozone consistent with the Phase 2 Rule. EPA will address Michigan's satisfaction of these requirements in a separate rulemaking. In the interim, however, EPA expects Michigan to adhere to the requirements of the 2008 NSR Rule with respect to the treatment and identification of PM<sub>2.5</sub> precursors and the accounting for PM<sub>2.5</sub> and PM<sub>10</sub> condensables in applicability determinations and permitting emissions limits in its PSD program. We also expect Michigan to treat and explicitly identify NO<sub>x</sub> as a precursor to ozone for PSD permitting, consistent with the requirements of the Phase 2 Rule.

*Comment 7:* Ohio EPA submitted a comment letter to EPA disagreeing with our proposed disapproval of portions of its infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS intended to address the relevant requirements obligated by the 2008 NSR Rule and the Phase 2 Rule. Ohio EPA observes that EPA proposed a narrow disapproval of portions of its infrastructure SIP intended to meet the PSD requirements of section 110(a)(2)(C): Identifying PM<sub>2.5</sub> precursors; identifying PM<sub>2.5</sub> and PM<sub>10</sub> condensables in the PSD program; and, identifying NO<sub>x</sub> as a precursor to ozone. Ohio notes that our proposed rulemaking states that “the infrastructure SIP 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.” Ohio also notes that under section 110(a)(2)(C), states are required to “include a program” for the regulation of the modification and construction of any stationary source to assure that NAAQS are achieved, including a permit program as required under parts C and D. Citing Ohio Revised Code (ORC) 3704.03, the State argues that the director of Ohio EPA has the authority to implement Ohio’s NSR program contained in Ohio Administrative Code (OAC) 3745–31. Specifically, OAC 3745–31–01 defines “regulated NSR pollutant” as including any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator. Therefore, under

this authority, Ohio EPA has been applying its PSD program in accordance with the 2008 NSR Rule and the Phase 2 Rule, and as a result—Ohio EPA meets the requirement of section 110(a)(2)(C) to “include a program” that meets parts C and D. Ohio EPA asserts that EPA must approve these elements of Ohio’s SIP because the State has met the infrastructure SIP requirements for including a program that assures the PM<sub>2.5</sub> NAAQS is addressed in Ohio’s permit program, even absent Ohio submitting revisions to its PSD regulations as mandated by the 2008 NSR Rule and Phase 2 Rule.

*Response 8:* While it is true that Ohio EPA has included a program under parts C and D of the CAA in its SIP, and that EPA has approved various aspects of the State’s PSD program in the past,<sup>9</sup> EPA explained in our proposed rulemaking that the 2008 NSR Rule and Phase 2 Rule now obligate states to make explicit regulatory changes in order to clarify and remove any ambiguity concerning the requirements to specifically identify PM<sub>2.5</sub> precursors, to properly account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables, and to treat NO<sub>x</sub> as a precursor to ozone in permitting contexts. EPA recognizes that Ohio currently has some authority to treat SO<sub>2</sub> and NO<sub>x</sub> as presumed precursors to PM<sub>2.5</sub>, and in a similar manner, to treat NO<sub>x</sub> as a precursor to ozone in permitting decisions. Our proposed rulemaking also recognized that Ohio EPA is in the process of adopting revisions to its PSD program to be wholly consistent with the applicable infrastructure SIP requirements obligated by the 2008 NSR Rule and Phase 2 Rule (*see* FR 77 45995 at 45996–45998). EPA’s regulations as codified in 40 CFR 51.166(b)(49)(i) and 40 CFR 52.21(b)(50)(i) for PM<sub>2.5</sub> precursors, and 40 CFR 51.166(b)(49)(vi) and 40 CFR 52.21(b)(50)(vi) for PM<sub>2.5</sub> and PM<sub>10</sub> condensables, required states to make specific revisions by May 16, 2011 (*see* 73 FR 28321 at 28341). Because Ohio has not yet made these required revisions, however, EPA is finalizing a disapproval of these narrow portions of Ohio’s infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS. Likewise, the changes obligated by the Phase 2 Rule to explicitly identify NO<sub>x</sub> as a precursor to ozone and codified in 40 CFR 51.166(b)(1)(ii), 40 CFR 51.166(b)(2)(ii), 40 CFR 51.166(b)(23)(i), 40 CFR 51.166(49)(i), and footnote 1 to 40 CFR 51.166(i)(5)(i)(e) required states to submit specific revisions to EPA by June 15, 2007 (*see* 70 FR 71612 at 71683).

<sup>9</sup> *See, e.g.,* <http://www.epa.gov/reg50air/permits/const/frn-nsr.html>.

Because Ohio has not yet made these required revisions, EPA is finalizing a disapproval of this narrow portion of Ohio’s infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS.<sup>10</sup> EPA will work actively with the State to ensure that the necessary SIP revisions are completed as expeditiously as possible. In the interim, we expect the State to adhere to the requirements of the 2008 NSR Rule with respect to the treatment and identification of PM<sub>2.5</sub> precursors and the accounting for PM<sub>2.5</sub> and PM<sub>10</sub> condensables applicability determinations and permitting emissions limits in its PSD program. We also expect Ohio to treat and explicitly identify NO<sub>x</sub> as a precursor to ozone for PSD permitting consistent with the requirements of the Phase 2 Rule.

*Comment 9:* WDNR submitted a comment letter to EPA disagreeing with our proposed disapproval of portions of its infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS intended to address the relevant requirements obligated by the 2008 NSR Rule. WDNR states that EPA proposed a narrow disapproval of portions of its infrastructure SIP intended to meet the PSD requirements of section 110(a)(2)(C): Identifying PM<sub>2.5</sub> precursors; and, identifying PM<sub>2.5</sub> and PM<sub>10</sub> condensables in the PSD program.

Wisconsin notes that our proposed rulemaking states that “the infrastructure SIP 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.” Wisconsin also notes that under section 110(a)(2)(C), states are required to “include a program” for the regulation of the modification and construction of any stationary source to assure that NAAQS are achieved, including a permit program as required under parts C and D of CAA section 110(A)(2). Wisconsin argues that its infrastructure SIP submissions have clearly stated that WDNR has the resources and authorities necessary to implement and satisfy the requirements of section 110(a)(1) and (2) of the CAA for PM<sub>2.5</sub> and PM<sub>10</sub>.

Citing the definition of “regulated NSR air contaminant” in Wisconsin Administrative Code NR 405.02(25i) as including “any contaminant for which a national ambient air quality standard has been promulgated and any

<sup>10</sup> EPA has also taken other actions germane to the explicit identification of NO<sub>x</sub> as a precursor to ozone in Federally approved PSD programs, e.g., “Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS” (*see* 73 FR 16205), and “Partial Disapproval of “Infrastructure” State Implementation Plan” for Wisconsin (77 FR 35870).

constituents or precursors for the air contaminant identified by the administrator," the State asserts that it has been applying the PSD program in accordance with the explicit identification of precursor(s) to PM<sub>2.5</sub> and ozone, consistent with the 2008 NSR Rule and Phase 2 Rule.

Furthermore, the State observes that all permits issued by WDNR address these requirements as codified by EPA, or through EPA guidance under the authority provided in Wisconsin State Statute and Wisconsin Administrative Code. WDNR therefore contends that it has met the requirements of section 110(a)(2)(C) to include a program that meets part C and D.

WDNR also notes that it has been accounting for condensable particulate matter in its PSD permitting program since the beginning of the program; particulate matter and particulate matter emissions have been defined to include condensables since 1989 and have been a part of the approved SIP since 1993. Wisconsin asserts that EPA must approve these elements of Wisconsin's infrastructure SIP, because WDNR has met the applicable requirements.

*Response 9:* While it is true that WDNR has included a program required under parts C and D of the CAA in its SIP, and EPA has approved various aspects of the State's PSD program in the past,<sup>11</sup> EPA explained in our proposed rulemaking that the 2008 NSR Rule and Phase 2 Rule now obligate states to make explicit regulatory changes in order to clarify and remove any ambiguity concerning the requirements to explicitly identify PM<sub>2.5</sub> precursors, to properly account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables, and to treat NO<sub>x</sub> as a precursor to ozone in permitting contexts.<sup>12</sup> Our proposed rulemaking referenced Wisconsin's definition of "regulated NSR air contaminant" as providing generic language to define what constitutes a regulated NSR pollutant; however, the State's current rules do not contain provisions that would directly account for PM<sub>2.5</sub> and its precursors in NSR permitting. EPA's regulations as codified in 40 CFR 51.166(b)(49)(i) and 40 CFR 52.21(b)(50)(i) for PM<sub>2.5</sub> precursors, required states to make specific revisions by May 16, 2011. Because Wisconsin has not yet made these required revisions, EPA is finalizing a disapproval of this narrow portion of Wisconsin's infrastructure

SIP for the 2006 PM<sub>2.5</sub> NAAQS with respect to the explicit identification of PM<sub>2.5</sub> precursors. With respect to accounting for particulate matter condensables in its PSD permitting program, EPA recognizes that Wisconsin Administrative Code NR 439 contains the requirements for reporting, recordkeeping, testing, inspection, and determination of compliance for air contaminant sources and their owners and operators. Of note, NR 439.02(4) defines "condensable [sic] particulate matter" as "any material, except uncombined water, that may not be collected in the front half of the particulate emission sampling train but which exists as a solid or liquid at standard conditions." However, Wisconsin's current SIP does not contain the explicit language to account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables in applicability determinations and permitting decisions, as required by 40 CFR 51.166(b)(49)(vi) and 40 CFR 52.21(b)(50)(vi), and to date, the State has not made a submission with such revisions. As a result of EPA's own regulations and the May 16, 2011 deadline for submitting revisions consistent with the 2008 NSR Rule, we are finalizing the disapproval of this narrow portion of Wisconsin's infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS with respect to the explicit regulation of PM<sub>2.5</sub> and PM<sub>10</sub> condensables in permits. EPA will work actively with the State to ensure that the necessary SIP revisions are completed as expeditiously as possible. We will work with Wisconsin to rectify these issues promptly, and in the interim, we expect the State to adhere to the requirements of the 2008 NSR Rule with respect to the treatment and identification of PM<sub>2.5</sub> precursors and the accounting for PM<sub>2.5</sub> and PM<sub>10</sub> condensables in applicability determinations and permitting emissions limits in its PSD program. Although not germane to this action, we also expect Wisconsin to treat and explicitly identify NO<sub>x</sub> as a precursor to ozone for PSD permitting consistent with the requirements of the Phase 2 Rule.

### III. What action is EPA taking?

For the reasons discussed in the proposed rulemaking, EPA is taking final action to approve most elements and disapprove narrow portions of other elements of submissions from the EPA

Region 5 States certifying that the current SIPs are sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2006 PM<sub>2.5</sub> NAAQS. EPA is also taking final action to approve portions of a submission from Indiana intended to meet EPA's requirements for the NSR and PSD programs in that State. Specifically, they are: (i) 326 IAC 2-1.1-1(2); (ii) 326 IAC 2-1.1-1(10); (iii) 326 IAC 2-2-1(dd)(1); (iv) 326 IAC 2-2-1(ff)(7); (v) 326 IAC 2-2-1(ss)(1); (vi) 326 IAC 2-2-1(ww)(1)(F); (vii) 326 IAC 2-2-1(ww)(1)(G); and, (viii) 326 IAC 2-2-4(b)(2)(vi). As detailed in our proposed rulemaking, these revisions are wholly consistent with the infrastructure SIP requirements associated with the 2008 NSR Rule and the Phase 2 Rule.

Due to the current status of CSAPR, EPA is not finalizing our previously proposed approval for the interstate transport requirements addressing visibility protection of section 110(a)(2)(D)(i)(II) for Indiana, Ohio, Minnesota, and Wisconsin for the 2006 PM<sub>2.5</sub> NAAQS. EPA is also not taking any action on Michigan's satisfaction of these requirements. As explained in the comments and responses section, EPA is finalizing our previously proposed approval of Illinois' infrastructure SIP for the interstate transport requirements addressing visibility protection of section 110(a)(2)(D)(i)(II).

As a result of a comment letter submitted by the State of Michigan, EPA is not finalizing our previously proposed disapproval of narrow portions of section 110(a)(2)(C), section 110(a)(2)(D)(i)(II), and section 110(a)(2)(J) for the State. Instead, EPA will address Michigan's satisfaction of the applicable PSD requirements obligated by the 2008 NSR Rule and the Phase 2 Rule in a separate rulemaking. Lastly, as a result of a comment received during the public comment period, EPA is not finalizing its proposed approval of the submission from Indiana with respect to one narrow issue that relates to section 110(a)(2)(C), (D)(i)(II), and (J). Specifically, EPA will address the PSD source impact analysis requirements for the 2006 PM<sub>2.5</sub> NAAQS in the State of Indiana in a later action.

EPA's final actions for each Region 5 State's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

<sup>11</sup> See, e.g., <http://www.epa.gov/reg5oair/permits/const/frn-nsr.html>.

<sup>12</sup> Note that EPA has already finalized the disapproval of narrow portions of Wisconsin's infrastructure SIP for the 1997 ozone and PM<sub>2.5</sub>

NAAQS with respect to the NO<sub>x</sub> as a precursor to ozone provisions per the Phase 2 Rule (see 77 FR 35870).

Element	IL	IN <sup>13</sup>	OH	MI	MN	WI
A: Emission limits and other control measures .....	A	A	A	A	A	A
B: Ambient air quality monitoring and data system .....	A	A	A	A	A	A
C1: Enforcement of SIP measures .....	A	A	A	A	A	A
C2: PM <sub>2.5</sub> precursors for PSD .....	*D	A	D	NA	*D	D
C3: PM <sub>2.5</sub> and PM <sub>10</sub> condensables for PSD .....	*D	A	D	NA	*D	D
C4: NO <sub>x</sub> as a precursor to ozone for PSD .....	*D	A	D	NA	*D	NA
C5: GHG permitting thresholds in PSD regulations .....	*D	A	A	A	*D	A
D1: Contribute to nonattainment/interfere with maintenance of NAAQS	NA	NA	NA	NA	NA	NA
D2: PSD .....	**	**	**	**	**	**
D3: Visibility Protection .....	A	NA	NA	NA	NA	NA
D4: Interstate Pollution Abatement .....	*D	A	A	A	*D	A
D5: International Pollution Abatement .....	A	A	A	A	A	A
E: Adequate resources .....	A	A	A	A	A	A
E: State boards .....	NA	NA	NA	NA	NA	NA
F: Stationary source monitoring system .....	A	A	A	A	A	A
G: Emergency powers .....	A	A	A	A	A	A
H: Future SIP revisions .....	A	A	A	A	A	A
I: Nonattainment area plan or plan revisions under part D .....	NA	NA	NA	NA	NA	NA
J1: Consultation with government officials .....	A	A	A	A	A	A
J2: Public notification .....	A	A	A	A	A	A
J3: PSD .....	**	**	**	**	**	**
J4: Visibility protection .....	+	+	+	+	+	+
K: Air quality modeling and data .....	A	A	A	A	A	A
L: Permitting fees .....	A	A	A	A	A	A
M: Consultation and participation by affected local entities .....	A	A	A	A	A	A

In the above table, the key is as follows:

- A Approve.
- NA No Action/Separate Rulemaking.
- D Disapprove.
- + Not relevant in these actions.
- \* Federally promulgated rules in place.
- \*\* Previously discussed in element (C).

As originally described in the proposed rulemaking, EPA is finalizing disapproval of the infrastructure SIP submissions from Illinois and Minnesota with respect to certain PSD requirements including: (i) The explicit identification of SO<sub>2</sub> and NO<sub>x</sub> as PM<sub>2.5</sub> precursors consistent with the requirements of the 2008 NSR Rule; (ii) the regulation of PM<sub>2.5</sub> and PM<sub>10</sub> condensables consistent with the requirements of the 2008 NSR Rule; (iii) the explicit identification of NO<sub>x</sub> as a precursor to ozone consistent with the Phase 2 Rule; and, (iv) permitting of GHG emitting sources at the Federal Tailoring Rule thresholds.

EPA is also finalizing the disapproval of the infrastructure SIP submissions from Illinois and Minnesota with respect to the requirements of section 110(a)(2)(D)(ii) related to interstate pollution abatement. Specifically, this section requires states with PSD programs have provisions requiring a new or modified source to notify neighboring states of the potential impacts from the source, consistent with the requirements of section 126(a).

<sup>13</sup> In addition to the information provided in this table for the State of Indiana, EPA reiterates once again that we are not finalizing any action with respect to the PSD source impact analysis requirements of section 110(a)(2)(C), (D)(i)(II), and (J) for the 2006 PM<sub>2.5</sub> NAAQS.

However, Illinois and Minnesota have no further obligations as a result of this disapproval because Federally promulgated rules, promulgated at 40 CFR 52.21 are in effect in each of these States. EPA has delegated the authority to Illinois and Minnesota to administer these rules, which include provisions related to PSD and interstate pollution abatement. This final disapproval for Illinois and Minnesota for these infrastructure SIP requirements will not result in sanctions under section 179(a), nor will it obligate EPA to promulgate a FIP within two years of final action if the States do not submit revisions to their PSD SIPs addressing these deficiencies. Instead, Illinois and Minnesota are already subject to the Federally promulgated PSD regulations, and both States administer these regulations via EPA's delegated authority.

The grounds for EPA's final disapproval of portions of the infrastructure SIP submittals from Ohio and Wisconsin are very narrow, and pertain only to these specific deficiencies in the States' SIPs described in the relevant sections of the proposed rulemaking, as well as in the responses to comments section of today's rulemaking.

As previously discussed, EPA believes that Ohio has been actively preparing necessary revisions to its PSD

program, consistent with the requirements of the Phase 2 Rule and the 2008 NSR Rule. We will work with the State to rectify these issues promptly. In addition, EPA will work with WDNR to account for the explicit identification of precursors to PM<sub>2.5</sub>, as well as PM<sub>2.5</sub> and PM<sub>10</sub> condensables, in its PSD program.<sup>14</sup>

Under section 179(a) of the CAA, final disapproval of a submission that addresses a requirement of a Part D Plan (section 171–section 193 of the CAA), or is required in response to a finding of substantial inadequacy as described in section 110(k)(5) starts a sanction clock. The provisions in the submissions we are disapproving were not submitted by Ohio or Wisconsin to meet either of those requirements. Therefore, no sanctions under section 179 will be triggered.

The full or partial disapproval of a SIP revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than two years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator

<sup>14</sup> Although not specific to this action, EPA will also continue to work with WDNR to ensure that revisions to the State's PSD program contain provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone, consistent with the Phase 2 Rule.

promulgates such FIP. As detailed in the proposed rulemaking, EPA anticipates that Ohio EPA will make submissions rectifying each of the deficiencies that are the basis for the disapprovals in this action. Further, EPA anticipates acting on the anticipated submissions from the State within the two year time frame prior to our FIP obligation on these very narrow issues. In the interim, EPA expects Ohio to treat and explicitly identify NO<sub>x</sub> as a precursor to ozone for PSD permitting consistent with the requirements of the Phase 2 Rule. EPA also expects the State to adhere to the requirements of the 2008 NSR Rule with respect to the treatment and identification of PM<sub>2.5</sub> precursors and the accounting for PM<sub>2.5</sub> and PM<sub>10</sub> condensables in applicability determinations and permitting emissions limits in its PSD program.

EPA will actively work with Wisconsin to incorporate changes to its PSD program that explicitly identify PM<sub>2.5</sub> precursors and account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables in applicability determinations and permitting emissions limits, consistent with the 2008 NSR Rule. In the interim, EPA expects WDNR to adhere to the associated requirements of the 2008 NSR Rule in its PSD program, specifically with respect to the explicit identification of PM<sub>2.5</sub> precursors, and the accounting for PM<sub>2.5</sub> and PM<sub>10</sub> condensables in applicability determinations and permitting emissions limits.

**VI. 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);
- 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, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Environmental protection, Air pollution control, Incorporation by

**EPA-APPROVED INDIANA REGULATIONS**

reference, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements.

Dated: September 26, 2012.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

*Authority:* 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.731 is amended by adding paragraph (c) to read as follows:

**§ 52.731 Section 110(a)(2) infrastructure requirements.**

\* \* \* \* \*

(c) Approval and Disapproval—In an August 9, 2011, submittal, and supplemented on August 25, 2011, and June 27, 2012, Illinois certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is not taking action on (D)(i)(I) and the state board requirements of (E)(ii). Although EPA is disapproving portions of Illinois' submission addressing the prevention of significant deterioration, Illinois continues to implement the Federally promulgated rules for this purpose as they pertain to (C), (D)(i)(II), (D)(ii), and (J).

■ 3. In § 52.770:

■ a. The table in paragraph (c) is amended by adding an entry in numerical order for "2-1.1-1", and revising the entries for "2-2-1", and "2-2-4".

■ b. The table in paragraph (e) is amended by adding entries in alphabetical order for "Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour PM<sub>2.5</sub> NAAQS".

The revised and added text reads as follows:

**§ 52.770 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
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* 2-1.1-1 .....	* Definitions .....	* July 11, 2012 ....	* October 29 2012, [Insert page number where the document begins].	* (2) and (10) only.
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EPA-APPROVED INDIANA REGULATIONS—Continued

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
2-2-1	Definitions	July 11, 2012	October 29 2012, [Insert page number where the document begins].	(dd)(1), (ff)(7), (ss)(1), (ww)(1)(F), and (ww)(1)(G) only.
2-2-4	Air quality analysis; requirements ..	July 11, 2012	October 29 2012, [Insert page number where the document begins].	(b)(2)(vi) only.

\* \* \* \* \* (e) \* \* \*

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour PM <sub>2.5</sub> NAAQS.	10/20/2009, 6/25/2012, 7/12/2012.	10/29/2012, [Insert page number where the document begins].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We are not finalizing action on the PSD source impact analysis requirements of section 110(a)(2)(C), (D)(i)(II), and (J), the visibility protection requirements of (D)(i)(II), and the state board requirements of (E)(ii). We will address these requirements in a separate action.

■ 4. In § 52.1170, the table in paragraph (e) is amended by adding an entry at the end of the table for “Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour PM<sub>2.5</sub> 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
Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour PM <sub>2.5</sub> NAAQS.	Statewide	8/15/2011, 7/9/2012	10/29/2012, [Insert page number where the document begins].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on the visibility protection requirements of (D)(i)(II) and the state board requirements of (E)(ii). We will address these requirements in a separate action. We are taking no action on portions of Michigan’s infrastructure SIP submission addressing the relevant prevention of significant deterioration requirements of the 2008 NSR Rule (identifying PM <sub>2.5</sub> precursors, and the regulation of PM <sub>2.5</sub> and PM <sub>10</sub> condensables in permits) and the Phase 2 Rule (identification of NO <sub>x</sub> as a precursor to ozone) with respect to section 110(a)(2)(C), (D)(i)(II), and (J).

■ 5. In § 52.1220, the table in paragraph (e) is amended by adding an entry in alphabetical order for “Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour PM<sub>2.5</sub> NAAQS” to read as follows: **§ 52.1220 Identification of plan.** \* \* \* \* \* (e) \* \* \*

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Comments
* Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour Ozone NAAQS.	* Statewide .....	* 5/23/2011, 6/27/2012 (submittal dates).	* 10/29/2012, [Insert page number where the document begins].	* This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We are not finalizing action on the visibility protection requirements of (D)(i)(II) or the state board requirements of (E)(ii). We will address these requirements in a separate action. Although EPA is disapproving portions of Minnesota's submission addressing the prevention of significant deterioration, Minnesota continues to implement the Federally promulgated rules for this purpose as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J).
* 	* 	* 	* 	* 

■ 6. Section 52.1891 is amended by adding paragraph (c) to read as follows:

**§ 52.1891 Section 110(a)(2) infrastructure requirements.**

\* \* \* \* \*

(c) Approval and Disapproval—In a September 4, 2009 submittal, supplemented on June 3, 2011, and July 5, 2012, Ohio certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2006 24-hour PM<sub>2.5</sub> NAAQS. We are not finalizing action on the visibility protection requirements of (D)(i)(II) or the state board requirements of (E)(ii). We will address these requirements in a separate action. We are disapproving narrow portions of Ohio's infrastructure SIP submission addressing the relevant prevention of significant deterioration requirements of the 2008 NSR Rule (identifying PM<sub>2.5</sub> precursors, and the regulation of PM<sub>2.5</sub> and PM<sub>10</sub> condensables in permits) and the Phase 2 Rule (identification of NO<sub>x</sub> as a precursor to ozone) with respect to section 110(a)(2)(C), (D)(i)(II), and (J).

■ 7. Section 52.2591 is amended by adding paragraph (e) to read as follows:

**§ 52.2591 Section 110(a)(2) infrastructure requirements.**

\* \* \* \* \*

(e) Approval and Disapproval—In a January 24, 2011, submittal, supplemented on March 28, 2011, and June 29, 2012, Wisconsin certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2006 24-hour PM<sub>2.5</sub> NAAQS. We are not finalizing action on (D)(i)(I), the

visibility protection requirements of (D)(i)(II), and the state board requirements of (E)(ii). We will address these requirements in a separate action. We are disapproving narrow portions of Wisconsin's infrastructure SIP submission addressing the relevant prevention of significant deterioration requirements of the 2008 NSR Rule (identifying PM<sub>2.5</sub> precursors and the regulation of PM<sub>2.5</sub> and PM<sub>10</sub> condensables in permits) with respect to section 110(a)(2)(C), (D)(i)(II), and (J).

[FR Doc. 2012-26289 Filed 10-26-12; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2008-0929; FRL-9746-2]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Attainment Demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Philadelphia-Wilmington-Atlantic City Moderate Nonattainment Area**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving the attainment demonstration portion of the attainment plan submitted by the State of Maryland as a State Implementation Plan (SIP) revision. The Maryland SIP revision demonstrates attainment of the 1997 8-hour ozone national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington-Atlantic City,

PA-NJ-MD-DE moderate nonattainment area (Philadelphia Area) by the applicable attainment date of June 2011. EPA is approving the SIP revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on November 28, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2008-0929. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by email at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

**SUPPLEMENTARY INFORMATION:**