



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2011-0888; FRL-9910-74-Region 5]

Approval and Promulgation of Air Quality Implementation Plans;

Illinois, Michigan, Minnesota, Wisconsin;

Infrastructure SIP Requirements for the 2008 Lead NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of state implementation plan (SIP) submissions from Michigan and Wisconsin while proposing to approve some elements and disapprove other elements of SIP submissions from Illinois and Minnesota regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 lead National Ambient Air Quality Standards (2008 Pb 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. Illinois and Minnesota already administer federally promulgated regulations that address the proposed disapprovals described in today's rulemaking and as a result, there is no practical effect for either of these states.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2011-0888 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
 2. E-mail: aburano.douglas@epa.gov.
 3. Fax: (312) 408-2279.
 4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
 5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.
- Instructions:* Direct your comments to Docket ID. EPA-R05-OAR-2011-0888. EPA's policy is that all comments received will be included in the public docket without change and may be made

available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI 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 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, Environmental Engineer, 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.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

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I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).
2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these SIP submissions?

A. What state SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the following states in EPA Region 5: Illinois Environmental Protection Agency (Illinois EPA); Michigan Department of Environmental Quality (MDEQ); Minnesota Pollution Control Agency (MPCA); and Wisconsin Department of Natural Resources (WDNR). The states submitted their 2008 Pb NAAQS infrastructure SIPs on the following dates: Illinois - December 31, 2012; Michigan - April 3, 2012, and supplemented on August 9, 2013, and September 19, 2013; Minnesota - June 19, 2012; and, Wisconsin - July 26, 2012.

B. Why did the states make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 Pb 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 Pb and ozone already meet 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_{2.5} National Ambient Air Quality Standards” (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 PM_{2.5}¹ NAAQS entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)” (2009 Memo), followed by the October 14, 2011, “Guidance on infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)” (2011 Memo). Most recently, EPA issued “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)” on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2), and primarily address the 2008 Pb NAAQS. To the extent that the prevention of significant deterioration (PSD) program is comprehensive and non-NAAQS specific, a narrow evaluation of other NAAQS, such as the 1997 8-hour ozone and 2006 PM_{2.5} NAAQS will be included in the appropriate sections.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from Illinois, Michigan, Minnesota, and Wisconsin that addresses the

¹ PM_{2.5} refers to particulate matter of 2.5 microns or less in diameter, oftentimes referred to as “fine” particles.

infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the

CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.² EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

² For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the CAA, which specifically address nonattainment SIP requirements.³ Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.⁴ This

³ See, e.g., "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule," 70 FR 25162, at 25163 - 65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

⁴ EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.⁵ Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the

⁵ See, e.g., "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 PM_{2.5} NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 PM_{2.5} NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 PM_{2.5} NAAQS).

entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.⁶

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.⁷

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions

⁶ On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

⁷ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that

each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.⁸ EPA's 2013 Memo was developed to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP

⁸ EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

submissions.⁹ The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Memo explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on

⁹ EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

the structure of an individual state's permitting or enforcement program (e.g., whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 PM_{2.5} NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review (NSR) program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction 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 may be contrary to the CAA because they purport to allow revisions to

SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) 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"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.¹⁰ It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every

¹⁰ By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, the 2013 Memo gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.¹¹ Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.¹² Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part

11 For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

12 EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.¹³

III. What guidance is EPA using to evaluate these SIP submissions?

EPA's guidance for these infrastructure SIP submissions is embodied in the 2007 Memo. Specifically, attachment A of this memorandum (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. The 2009 Memo was issued to provide additional guidance for certain elements to meet the requirements of section 110(a)(1) and (2) of the CAA, and the 2011 Memo provides guidance specific to the 2008 Pb NAAQS. Lastly, the 2013 Memo identifies and further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

¹³ See, e.g., EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

IV. What is the result of EPA's review of these SIP submissions?

As noted in the 2011 Memo and reiterated in the 2013 Memo, pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. Each state referenced in this rulemaking provided the opportunity for public comment that ended on the following dates: Illinois - October 24, 2012; Michigan - February 29, 2012; Minnesota - May 25, 2012; and, Wisconsin - June 18, 2012. Each state also provided an opportunity for a public hearing. None of the states referenced in this rulemaking received any written comments, nor were public hearings requested by interested parties. EPA is also soliciting comment on our evaluation of each state's infrastructure SIP submission in this notice of proposed rulemaking. Illinois, Michigan, Minnesota, and Wisconsin provided detailed synopses of how various components of their SIPs meet each of the requirements in section 110(a)(2) for the 2008 Pb NAAQS, as applicable. The following review evaluates the states' submissions.

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. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.¹⁴ 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.

The Illinois Environmental Protection Act is contained in chapter 415, section 5, of the Illinois Compiled Statutes (415 ILCS 5). 415 ILCS 5/4 provides Illinois EPA with the authority to develop rules and regulations necessary to meet ambient air quality standards. Additionally, the Illinois Pollution Control Board (IPCB) was created under 415 ILCS 5, providing the IPCB with the authority to develop rules and regulations necessary to promote the purposes of the Illinois Environmental Protection Act. Furthermore, the IPCB ensures compliance with required laws and other elements of the State's attainment plan that are necessary to attain the NAAQS, and to comply with the requirements of the CAA. (415 ILCS 5/10) EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 Pb NAAQS.

¹⁴ See, e.g., EPA's 73 FR 66964 at 67034, final rule on "National Ambient Air Quality Standards for Lead."

The Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), sections 324.5503 and 324.5512, provide the Director of MDEQ with the authority to regulate the discharge of air pollutants, and to promulgate rules to establish standards for emissions for ambient air quality and for emissions. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 Pb NAAQS.

Minnesota Statute chapter 116.07 gives MPCA the authority to "[a]dopt, amend, and rescind rules and standards having the force of law relating to any purpose . . . for the prevention, abatement, or control of air pollution." EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 Pb NAAQS.

Wisconsin Statutes (WS) chapter 285.11 through WS chapter 285.19 establish general authority for monitoring, updating, and implementing necessary revisions to the Wisconsin SIP. Additional authorities for WDNR related to specific pollutants are contained in WS chapter 285.21 through WS chapter 285.29. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 Pb NAAQS.

As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

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

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. This review of the 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.

Illinois EPA continues to operate an extensive monitoring network incorporating more than 200 monitors throughout the state. Illinois EPA also publishes an annual report that summarizes air quality trends. Furthermore, Illinois EPA submits yearly monitoring network plans to EPA, and EPA approved the 2014 Annual Air Monitoring Network Plan for Pb on August 21, 2013. In this monitoring network approval, EPA noted that the operation of two ambient air monitoring sites for Pb,

ArcelorMittal Steel and Johnson Controls, needed to commence as expeditiously as possible. On November 8, 2013, Illinois EPA confirmed that that these two sites had begun operating on October 7, 2013, and October 31, 2013, respectively. Monitoring data from Illinois EPA are entered into AQS in a timely manner, and the state provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2008 Pb NAAQS.

MDEQ maintains a comprehensive network of air quality monitors throughout Michigan. EPA approved MDEQ's 2014 Annual Air Monitoring Network Plan for Pb on October 23, 2013. MDEQ enters air monitoring data into AQS, and the State provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2008 Pb NAAQS.

MPCA continues to operate an ambient pollutant monitoring network, and compiles and reports air quality data to EPA. EPA approved MPCA's 2014 Annual Air Monitoring Network Plan for Pb on October 23, 2013. MPCA also provides prior notification to EPA when changes to its monitoring network or plan are being considered. EPA proposes that Minnesota has met the

infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2008 Pb NAAQS.

WDNR continues to operate an extensive monitoring network; EPA approved the state's 2014 Annual Air Monitoring Network Plan for Pb on August 19, 2013. WDNR enters air quality data into AQS in a timely manner, and gives EPA prior notification when considering a change to its monitoring network or plan. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2008 Pb NAAQS.

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

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and NNSR programs. Part C of the CAA (sections 160 - 169B) addresses PSD, while part D of the CAA (sections 171 - 193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers: (i) enforcement of SIP measures; (ii) PSD program for the 2008 Pb NAAQS; (iii) PSD provisions that explicitly identify oxides of nitrogen (NOx) as a precursor to ozone in the PSD program; (iv) identification of precursors to PM_{2.5} and the identification

of PM_{2.5} and PM₁₀¹⁵ condensables in the PSD program; (v) PM_{2.5} increments in the PSD program; and, (vi) GHG permitting and the "Tailoring Rule."¹⁶ In today's rulemaking, we are evaluating each state's submission as it relates to the enforcement of SIP measures. We are also evaluating the submissions from Illinois, Michigan, and Minnesota with respect to the various PSD program and GHG permitting requirements. We are not taking action on Wisconsin's satisfaction of these requirements, which include a PSD program for the 2008 Pb NAAQS, PSD provisions that explicitly identify NOx as a precursor to ozone in the PSD program, the identification of precursors to PM_{2.5} and the identification of PM_{2.5} and PM₁₀ condensables in the PSD program, PM_{2.5} increments in the PSD program, and GHG permitting and the "Tailoring Rule." Instead, EPA will evaluate Wisconsin's compliance with each of these requirements in a separate rulemaking.

Sub-element 1: Enforcement of SIP measures

15 PM₁₀ refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as "coarse" particles.

16 In 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 (see 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 (see 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address Pb, NOx 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 2008 Pb NAAQS.

Illinois continues to staff and implement an enforcement program comprised, and operated by, the Compliance Section and Division of Legal Counsel. 415 ILCS 5/4 provides the Director of Illinois EPA with the authority to implement and administer this enforcement program. Furthermore, Illinois EPA has confirmed that all enforcement actions are brought by the Office of the Illinois Attorney General or local State's Attorney offices, with whom Illinois EPA consults. EPA proposes that Illinois has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2008 Pb NAAQS.

MDEQ continues to staff and implement an enforcement program to assure compliance with all requirements under State law, consistent with the provisions of Act 451. Additionally, this air quality enforcement unit provides support and technical assistance to Michigan's Attorney General on all air pollution enforcement issues referred by MDEQ's Air Quality Division for escalated enforcement action. Lastly, the air quality enforcement unit at MDEQ coordinates formal administrative actions such as contested case hearings, administrative complaints, and revocation of permits to install. Therefore, EPA proposes that Michigan has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2008 Pb NAAQS.

Minnesota Statute chapter 116.07 gives the MPCA the authority to enforce any provisions of the chapter relating to air contamination. These provisions include: entering into orders; schedules of compliance; stipulation agreements; requiring owners or operators of emissions facilities to install and operate monitoring equipment; and conducting investigations. Minnesota Statute chapter 116.072 authorizes MPCA to issue orders and assess administrative penalties to correct violations of the agency's rules, statutes, and permits, and Minnesota Statute chapter 115.071 outlines the remedies that are available to address such violations. Lastly, Minnesota Administrative Rules 7009.0030 to 7009.0040 provide for enforcement measures. EPA proposes that Minnesota has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2008 Pb NAAQS.

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. Under WS chapter 285.13, WDNR has the authority to impose fees and penalties to ensure that required measures are ultimately implemented. WS chapter 285.83 and WS chapter 285.87 provide WDNR with the authority to enforce

violations and assess penalties. EPA proposes that Wisconsin has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2008 Pb NAAQS.

Sub-element 2: PSD program for the 2008 Pb NAAQS

Pursuant to the 2011 Memo, a state should demonstrate that it is authorized to implement its PSD permit program to ensure that the construction of major stationary sources does not cause or contribute to a violation of the 2008 Pb NAAQS.

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two states, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules include provisions that ensure that the construction of major stationary sources does not cause or contribute to a violation of the 2008 Pb NAAQS. EPA acknowledges that these two states have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(C). However, Illinois and Minnesota have no further obligations to EPA because both states administer the Federally promulgated PSD regulations.

Michigan's EPA-approved PSD rules, contained at R 336.2801 - R 336.2823, contain provisions that adequately address the

applicable infrastructure SIP requirements related to the 2008 Pb NAAQS. EPA proposes that Michigan has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2008 Pb NAAQS.

Sub-element 3: 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 (see 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, and consisted of the following¹⁷:

40 CFR 51.166 (b) (1) (ii): A major source that is major for volatile organic compounds (VOCs) or NO_x shall be considered major for ozone;

40 CFR 51.166 (b) (2) (ii): Any significant emissions increase (as defined at paragraph (b) (39) of this section) from any emissions units or net emissions increase (as

¹⁷ Similar changes were codified in 40 CFR 52.21.

defined in paragraph (b) (3) of this section) at a major stationary source that is significant for VOCs or NOx shall be considered significant for ozone;

40 CFR 51.166 (b) (23) (i): Ozone: 40 tons per year (tpy) of VOCs or NOx;

40 CFR 51.166 (b) (49) (i)¹⁸: Any pollutant for which a NAAQS has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., VOCs and NOx) are precursors for ozone; and

40 CFR 51.166 (i) (5) (i) (e) footnote 1: No *de minimis* air quality level is provided for ozone. However, any net emissions increase of 100 tpy or more of VOCs or NOx subject to PSD would be required to perform an ambient impact analysis, including the gathering of air quality data.

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including these specific NOx as a precursor to ozone provisions, by June 15, 2007 (see 70 FR 71612 at 71683).

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for

18 Note that this section of 40 CFR 51.166 has been amended as a result of EPA's Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5}); the regulatory text as listed was current as of the issuance of the Phase 2 Rule. The current citation for the VOCs and NOx as precursors for ozone are contained in 40 CFR 51.166 (b) (49) (i) (b) (i).

this purpose are in effect in these two states, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules include provisions that explicitly identify NO_x as a precursor to ozone. EPA acknowledges that these two states have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(C). However, Illinois and Minnesota have no further obligations to EPA because both states administer the Federally promulgated PSD regulations.

On August 9, 2013, and supplemented on September 19, 2013, Michigan submitted revisions to its PSD program incorporating the necessary changes regarding NO_x as a precursor to ozone, consistent with the requirements of the Phase 2 Rule. MDEQ also requested that these revisions satisfy not only the requirements of the Phase 2 Rule, but any applicable PSD requirements associated with the 2008 Pb NAAQS infrastructure SIP. EPA's final approval of MDEQ's SIP revisions with respect to the Phase 2 Rule was published on April 4, 2014 (see 79 FR 18802). Therefore, we are proposing to find that Michigan has met this set of requirements of section 110(a)(2)(C) for the 2008 Pb NAAQS regarding the explicit identification of NO_x as a precursor to ozone, consistent with the Phase 2 Rule.

Sub-element 4: 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 (see 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 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).¹⁹

19 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, the 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, the EPA's approval of Indiana'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.

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 required be submitted to EPA by May 16, 2011 (*see* 73 FR 28321 at 28341).

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two states, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules include provisions that address the requirements obligated by the 2008 NSR Rule, including those that explicitly identify precursors to PM_{2.5}, and 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. EPA acknowledges that these two states have not satisfied the requirement for a SIP submission, which results in

a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(C).

However, Illinois and Minnesota have no further obligations to EPA because both states administer the Federally promulgated PSD regulations.

On August 9, 2013, and supplemented on September 19, 2013, Michigan submitted revisions to its PSD program incorporating the necessary changes obligated by the 2008 NSR Rule, including provisions that explicitly identify precursors to $PM_{2.5}$ and account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. MDEQ also requested that these revisions satisfy not only the requirements of the 2008 NSR Rule, but any applicable PSD requirements associated with the 2008 Pb NAAQS infrastructure SIP. EPA's final approval of MDEQ's SIP revisions with respect to the 2008 NSR Rule was published on April 4, 2014 (see 79 FR 18802). Therefore, we are proposing that Michigan has met this set of requirements of section 110(a)(2)(C) for the 2008 Pb NAAQS regarding the requirements obligated by the 2008 NSR Rule.

Sub-element 5: $PM_{2.5}$ 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).

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for

this purpose are in effect in these two states, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules include provisions that address the requirements obligated by the 2010 NSR Rule, including the increments established by the 2010 NSR Rule for incorporation into the SIP, as well as the revised major source baseline date, trigger date, and baseline area level of significance for PM_{2.5}. EPA acknowledges that these two states have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(C). However, Illinois and Minnesota have no further obligations to EPA because both states administer the Federally promulgated PSD regulations.

On August 9, 2013, and supplemented on September 19, 2013, Michigan submitted revisions to its PSD program incorporating the necessary changes obligated by the 2010 NSR Rule, including the increments established by the 2010 NSR Rule for incorporation into the SIP, as well as the revised major source baseline date, trigger date, and baseline area level of significance for PM_{2.5}. MDEQ also requested that these revisions satisfy not only the requirements of the 2010 NSR Rule, but any applicable PSD requirements associated with the 2008 Pb NAAQS infrastructure SIP. EPA's final approval of MDEQ's SIP

revisions with respect to the 2010 NSR Rule was published on April 4, 2014 (see 79 FR 18802). Therefore, we are proposing that Michigan has met this set of requirements of section 110(a)(2)(C) for the 2008 Pb NAAQS regarding the requirements obligated by the 2010 NSR Rule.

Sub-element 5: GHG permitting and the "Tailoring Rule"

On June 3, 2010, EPA issued a final rule establishing a "common sense" approach to addressing GHG emissions from stationary sources under the CAA permitting programs. The "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," or "Tailoring Rule," set thresholds for GHG emissions that define when permits under the NSR PSD and title V operating permit programs are required for new and existing industrial facilities (see 75 FR 31514). The Tailoring Rule set the GHG PSD applicability threshold at 75,000 tpy as expressed in carbon dioxide equivalent; if states have not adopted this threshold, sources with GHG emissions above 100 tpy or 250 tpy (depending on source category) would be subject to PSD, effective January 2, 2011. The lower thresholds could potentially result in certain residential and commercial sources triggering GHG PSD requirements.

On December 23, 2010, EPA issued a subsequent series of rules that put the necessary framework in place to ensure that industrial facilities can get CAA permits covering their GHG

emissions when needed, and that facilities emitting GHGs at levels below those established in the Tailoring Rule do not need to obtain CAA permits.²⁰ Included in this series of rules was EPA's issuance of the "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans," referred to as the PSD SIP "Narrowing Rule" on December 30, 2010 (see 75 FR 82536). The Narrowing Rule limits, or "narrows," EPA's approval of PSD programs that were previously approved into SIPs; the programs in question are those that apply PSD to sources that emit GHG. Specifically, the effect of the Narrowing Rule is that provisions that are no longer approved - e.g., portions of already approved SIPs that apply PSD to GHG emissions increases from sources emitting GHG below the Tailoring Rule thresholds - now have the status of having been submitted by the state but not yet acted upon by EPA. In other words, the Narrowing Rule focuses on eliminating the PSD obligations under Federal law for sources below the Tailoring Rule thresholds.

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two states, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These

²⁰ <http://www.epa.gov/NSR/actions.html#2010>.

Federally promulgated rules contain the GHG thresholds as outlined in the Tailoring Rule. EPA acknowledges that the states have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(C). However, Illinois and Minnesota have no further obligations to EPA because both states administer the Federally promulgated PSD regulations. Note, however, that EPA does propose that Illinois and Minnesota have met the requirement contained in section 110(a)(2)(E) regarding resources specific to permitting GHG.²¹

On July 27, 2010, Michigan informed EPA that the State has both the legal and regulatory authority, as well as the resources, to permit GHG under its SIP-approved PSD permitting program, consistent with the thresholds laid out in the Tailoring Rule.²² Therefore, EPA proposes that Michigan's GHG PSD permitting program has met this set of requirements of sections 110(a)(2)(C) and (E) for the 2008 Pb NAAQS.

For the purposes of the 2008 Pb NAAQS infrastructure SIPs, EPA reiterates that NSR reform regulations are not in the scope of these actions. Therefore, we are not taking action on

21 Section 110(a)(2)(E) requires that states have the resources to administer an air quality management program. Some states that are not covered by the Narrowing Rule may not be able to adequately demonstrate that they have adequate personnel to issue GHG permits to all sources that emit GHG under the Tailoring Rule thresholds.

22 Letter from the Director of MDEQ to EPA Region 5 Regional Administrator dated July 27, 2010.

existing NSR reform regulations for Illinois, Michigan, Minnesota, and Wisconsin.

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutants. EPA approvals for each state's minor NSR program occurred on: Illinois - May 31, 1972 (37 FR 10862); Michigan - May 6, 1980 (45 FR 29790); Minnesota - May 24, 1995 (60 FR 27411); and, Wisconsin - February 17, 1995 (60 FR 3543). Since these dates, each state agency 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 2008 Pb NAAQS.

Furthermore, various sub-elements in this section overlap with elements of section 110(a)(2)(D)(i), section 110(a)(2)(E) and section 110(a)(2)(J). These links will be discussed in the appropriate areas below.

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.

With respect to the 2008 Pb NAAQS, the 2011 Memo notes that the physical properties of Pb prevent it from experiencing the same travel or formation phenomena as PM_{2.5} or ozone. Specifically, there is a sharp decrease in Pb concentrations as the distance from a Pb source increases. Accordingly, it may be possible for a source in a state to emit Pb at a location and in such quantities that contribute significantly to nonattainment in, or interference with maintenance by, any other state. However, EPA anticipates that this would be a rare situation, e.g., sources emitting large quantities of Pb are in close proximity to state boundaries. The 2011 Memo suggests that the applicable interstate transport requirements of section 110(a)(2)(D)(i)(I) can be met through a state's assessment as to whether or not emissions from Pb sources located in close proximity to its borders have emissions that impact a neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state. One way that a state's conclusion could be supported is by the technical support documents used for initial area designations for Pb.

In its infrastructure SIP submission, Illinois noted that a small portion of Madison County and Cook County were designated as nonattainment for the 2008 Pb NAAQS (see 75 FR 71033 and 76 FR 72097). EPA's final technical support documents for these two nonattainment areas support the notion that the ambient concentration of Pb are not expected to exceed the NAAQS outside of the nonattainment boundaries. Furthermore, EPA does not believe that the elevated levels of ambient Pb concentrations in Madison County or Cook County (or emissions from any other county) would cause or contribute to a violation of the 2008 Pb NAAQS in a neighboring state, or create a situation in a neighboring state where maintenance of the 2008 Pb NAAQS was not possible. Therefore, EPA proposes that Illinois has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

Michigan noted that EPA designated a small portion of Ionia County as nonattainment for the 2008 Pb NAAQS (see 76 FR 72097). EPA's final technical support documents for this nonattainment area support the notion that the ambient concentration of Pb are not expected to exceed the NAAQS outside of the nonattainment boundaries. MDEQ's submission also confirms that impact screening performed by the state indicates that no adverse impacts to air quality are expected to neighboring states, Canada, or Class I areas from existing Pb-emitting sources in

Michigan. Furthermore, EPA does not believe that the elevated levels of ambient Pb concentrations in Ionia County (or Pb emissions from any other county) would cause or contribute to a violation of the 2008 Pb NAAQS in a neighboring state, the closest of which is Indiana (approximately 100 miles away from the nonattainment area in Ionia County). Similarly, EPA does not believe that Pb concentrations in this area would create a situation in a neighboring state where maintenance of the 2008 Pb NAAQS was not possible. Therefore, EPA proposes that Michigan has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

EPA designated a portion of Dakota County in Minnesota as nonattainment for the 2008 Pb NAAQS (see 75 FR 71033). Minnesota's submission notes, and EPA has confirmed, that but for the ambient air monitor located in Dakota County, all other monitors in the state have recorded very low values of Pb. EPA's final technical support documents for the nonattainment area in Dakota County support the notion that the ambient concentration of Pb are not expected to exceed the NAAQS outside of the nonattainment boundaries; the distance from Dakota County to the Minnesota-Wisconsin state line is approximately 20 miles. MPCA also notes that the sources of Pb emissions in Minnesota with yearly emissions greater than 0.5 tpy are not located close to any borders with neighboring states. Furthermore, EPA does

not believe that the elevated levels of ambient Pb concentrations in Dakota (or emissions from any other county) would cause or contribute to a violation of the 2008 Pb NAAQS in a neighboring state or create a situation in a neighboring state where maintenance of the 2008 Pb NAAQS was not possible.

Therefore, EPA proposes that Minnesota has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

EPA has designated the entirety of Wisconsin as unclassifiable/attainment for the 2008 Pb NAAQS (see 76 FR 72097). In its submission, WDNR notes that there is only one site in the state which requires continued ambient air monitoring for Pb emissions, and this area is approximately 70 miles from the Wisconsin-Illinois state line. Wisconsin also notes that other sources emitting at or above 0.5 tpy or more of Pb were found to contribute less than 50% of the NAAQS to the surrounding area's ambient air quality. EPA does not believe that emissions in any county of Wisconsin would cause or contribute to a violation of the 2008 Pb NAAQS in a neighboring state or create a situation in a neighboring state where maintenance of the 2008 Pb NAAQS was not possible. Therefore, EPA proposes that Wisconsin has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

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 to prevent significant deterioration of air quality or to protect visibility in another state.

EPA notes that each state's satisfaction of the applicable infrastructure SIP PSD requirements for the 2008 Pb NAAQS has been detailed in the section addressing section 110(a)(2)(C). EPA 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.

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two states, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules contain the applicable provisions contained in the Phase 2 Rule, the 2008 NSR Rule, the 2010 NSR Rule, and the GHG thresholds as outlined in the Tailoring Rule. EPA acknowledges that the states have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to these requirements. However, Illinois and Minnesota have no further obligations to EPA

because both states administer the Federally promulgated PSD regulations.

Michigan has submitted revisions to its PSD regulations that are wholly consistent with the EPA's requirements contained in the Phase 2 Rule, the 2008 NSR Rule, and the 2010 Rule. These revisions were approved on April 4, 2014 (see 79 FR 18802), and in this rulemaking, we are proposing that Michigan has met the applicable infrastructure SIP requirements for the 2008 Pb NAAQS as they relate to the requirements obligated by EPA's PSD regulations. We are also proposing that Michigan has met the applicable PSD requirements associated with the permitting of GHG emitting sources consistent with the thresholds laid out in the Tailoring Rule.

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.

Illinois' EPA-approved NNSR regulations can be found in Part 203 of the SIP; Michigan's EPA-approved NNSR regulations can be found in Part 2 of the SIP, specifically in R 336.1220 and R 336.1221; Minnesota's EPA-approved NNSR regulations can be found in chapter 7007.4000 - 7007.4030; and, Wisconsin's EPA-

approved NNSR regulations can be found in NR 408. Each state's NNSR regulations contain provisions for how the state must treat and control sources in Pb nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR 51. EPA proposes that Illinois, Michigan, Minnesota, and Wisconsin have met the requirements with respect to the prohibition of interference with a neighboring state's PSD program for the 2008 Pb NAAQS related to section 110(a)(2)(D)(i)(II).

With regard to 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). The 2009 Memo, the 2011 Memo, and 2013 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. Alternatively, the 2011 Memo states that most, if not all, Pb stationary sources are located at distances from Class I areas such that visibility impacts would be negligible. Although Pb can be a component of coarse and fine particles, it generally comprises a small fraction. When EPA evaluated the extent that Pb could impact visibility, Pb-related visibility impacts were found to be insignificant (e.g., less than 0.10%). Therefore, EPA anticipates that Pb emissions will contribute only negligibly to visibility

impairment at Class I areas, and states can include an assessment as to this assumption in their submissions.

EPA's final approval of Illinois' regional haze plan was published on July 6, 2012 (see 77 FR 39943). The closest Class I area (Mingo National Wildlife Refuge, Missouri) is located more than 150 miles away from the partial Madison County nonattainment area. As a result, EPA anticipates that Class I areas would experience less than 0.10% of adverse visibility impact from any Pb-emitting sources in Illinois. EPA proposes that Illinois has met this set of infrastructure SIP requirements of section 110(a)(2)(D)(i)(II) for the 2008 Pb NAAQS.

EPA's final approval of Michigan's regional haze plan was published on December 3, 2012 (see 77 FR 71533). Michigan's impact screening of Pb-emitting sources indicated that no adverse impacts on air quality should be expected in Class I areas. As a result, EPA anticipates that Class I areas would experience less than 0.10% of adverse visibility impact from any Pb-emitting source in Michigan. EPA proposes that Michigan has met this set of infrastructure SIP requirements of section 110(a)(2)(D)(i)(II) for the 2008 Pb NAAQS.

EPA's final approval of Minnesota's regional haze plan was published on June 12, 2012 (see 77 FR 34801). While the U.S. Steel Minntac facility is located approximately 50 miles from

the closest Class I area (Boundary Waters, Minnesota), EPA had previously determined that the ambient concentrations of Pb in the area around the facility were expected to be less than 50% of the 2008 Pb NAAQS. When the distance between the facility and the Boundary Waters is considered, EPA anticipates that Class I areas would experience less than 0.10% of adverse visibility impact from any Pb-emitting source in Minnesota. EPA proposes that Minnesota has met this set of infrastructure SIP requirements of 110(a)(2)(D)(i)(II) for the 2008 Pb NAAQS.

EPA's final approval of Wisconsin's regional haze plan was published on August 7, 2012 (see 77 FR 46952). As previously discussed in the section 110(a)(2)(D)(i), there is only one required Pb monitor in the state, and the local impacts from all other Pb-emitting sources at or above 0.5 tpy are expected to be less than half of the 2008 Pb NAAQS. The closest Class I area (Rainbow Lake, Wisconsin) is located more than 200 miles from the closest Pb-emitting source emitting at or above 0.5 tpy, and EPA anticipates that this area (or any other Class I area) would experience less than 0.10% of adverse visibility impact from any Pb-emitting sources in Wisconsin. EPA proposes that Wisconsin has met this set of infrastructure SIP requirements of 110(a)(2)(D)(i)(II) for the 2008 Pb NAAQS.

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.

While Illinois and Minnesota have not adopted or submitted regulations for PSD, Federally promulgated rules for this purpose are in effect in each of the states, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules contain provisions requiring new or modified sources to notify neighboring states of potential negative air quality impacts. EPA acknowledges that the states have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to this set of infrastructure SIP requirements of section 110(a)(2)(D)(ii). However, Illinois and Minnesota have no further obligations to EPA because both states administer the Federally promulgated PSD regulations.

Michigan and Wisconsin have provisions in their respective EPA-approved PSD programs requiring new or modified sources to notify neighboring states of potential negative air quality impacts. The states' submissions reference these provisions as being adequate to meet the requirements of section 126(a). EPA proposes that Michigan and Wisconsin have met the infrastructure SIP requirements of section 126(a) with respect to the 2008 Pb NAAQS. None of the states referenced in this rulemaking have obligations under any other section of section 126.

The submissions from Illinois, Michigan, Minnesota, and Wisconsin affirm that none of these states have pending obligations under section 115. EPA therefore is proposing that these states have met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement).

E. Section 110(a)(2)(E) - Adequate resources.

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.

Sub-element 1: Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues.

At the time of its submittal, Illinois EPA cited the recently passed Public Act in the state that provides appropriations for the Illinois Bureau of Air Programs and associated personnel. In addition to the environmental performance partnership agreement (EnPPA) with EPA, Illinois has confirmed that it retains all necessary resources to carry out required air programs. As discussed in previous sections, Illinois EPA has affirmed that 415 ILCS 5/4 and 415 ILCS 5/10 provide the Director, in conjunction with IPCB, with the authority to develop rules and regulations necessary to meet ambient air quality standards and respond to any EPA findings of inadequacy with the Illinois SIP program. Lastly, the IPCB ensures compliance with required laws or elements of the state's attainment plan that are necessary to attain the NAAQS, or that are necessary to comply with the requirements of the CAA. EPA proposes that Illinois has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2008 Pb NAAQS.

Michigan's budget ensures that EPA grant funds as well as state funding appropriations are sufficient to administer its air quality management program, and MDEQ has routinely demonstrated that it retains adequate personnel to carry out the duties of this program. Michigan's EnPPA with EPA documents certain funding and personnel levels for MDEQ. Furthermore, Act

451 provides the legal authority under state law to carry out the Michigan SIP. EPA proposes that Michigan has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2008 Pb NAAQS.

Minnesota provided information on the state's authorized spending by program, program priorities, and the State budget. MPCA's EnPPA with EPA provides the MPCA's assurances of resources to carry out certain air programs. EPA also notes that Minnesota Statute chapter 116.07 provides the legal authority under State law to carry out the SIP. EPA proposes that Minnesota has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2008 Pb 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 EnPPA 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 WS chapter 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 2008 Pb NAAQS.

As noted above in the discussion addressing section 110(a)(2)(C), the resources needed to permit all sources emitting more than 100 tpy or 250 tpy (as applicable) of GHG would require more resources than any Region 5 State appears to have. This is not a concern in Illinois and Minnesota, because PSD permitting for GHGs is based on Federally promulgated PSD rules that "tailor" the applicability to 75,000 tons per year (expressed as carbon dioxide equivalent).

EPA confirms that Michigan's PSD regulations provide the state with adequate resources to issue permits to sources with GHG emissions consistent with the Tailoring Rule thresholds; therefore, EPA proposes that Michigan retains all the resources necessary to implement the requirements of its SIP.

Given the effect of EPA's Narrowing Rule to provide that Wisconsin's approved SIP does not involve permitting GHG sources smaller than the Tailoring Rule thresholds, EPA proposes that Wisconsin has the resources necessary to implement the requirements of its SIP.

Sub-element 2: State board requirements under section 128 of the CAA.

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) that any board or body which approves permits

or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under 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.

In today's action, EPA is neither proposing to approve or disapprove the portions of the submissions from Illinois, Michigan, Minnesota, and Wisconsin intended to address the state board requirements of section 110(a)(2)(E)(ii). Instead, EPA will take separate action on compliance with section 110(a)(2)(E)(ii) for these states at a later time. EPA is working with each of these states to address these requirements in the most appropriate way.

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

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions

and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Illinois EPA requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued to the source. These reports are submitted to the Bureau of Air's Compliance Unit for review, and all reasonable efforts are made by Illinois EPA to maximize the effectiveness of available resources to review the required reports. EPA proposes that Illinois has satisfied the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2008 Pb NAAQS.

Michigan Administrative Code (MAC) R 336.2001 to R 336.2004 provide requirements for performance testing and sampling. MAC R 336.2101 to R 336.2199 provide requirements for continuous emission monitoring, and MAC R 336.201 and R 336.202 require annual reporting of emissions. This data is available to the public for inspection. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2008 Pb NAAQS.

Under Minnesota State air quality rules, any NAAQS is an applicable requirement for stationary sources. Minnesota's

monitoring rules have been previously approved by EPA and are contained in Chapter 7011 of Minnesota's SIP. Minnesota Statute chapter 116.07 gives MPCA the authority to require owners or operators of emission facilities to install and operate monitoring equipment, while Chapter 7007.0800 of Minnesota's SIP sets forth the minimum monitoring requirements that must be included in stationary source permits. Lastly, Chapter 7017 of Minnesota's SIP contains monitoring and testing requirements, including rules for continuous monitoring. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2008 Pb NAAQS.

WDNR requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued, to the Bureau of Air Management Compliance Team. The frequency and requirements for report review are incorporated as part of Wisconsin Administrative Code NR 438 and Wisconsin Administrative Code NR 439. Additionally, WDNR routinely submits quality assured analyses and data obtained from its stationary source monitoring system for review and publication. Basic authority for Wisconsin's Federally mandated Compliance Assurance Monitoring reporting structure is provided in Wisconsin Statute Chapter 285.65. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2008 Pb NAAQS.

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. The 2011 Memo states that infrastructure SIP submissions should specify authority, rested in an appropriate official, to restrain any source from causing or contributing to Pb emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

Illinois has the necessary authority to address emergency episodes, and these provisions are contained in 415 ILCS 5/34. 415 ILCS 5/43(a) authorizes the Illinois EPA to request a state's attorney from Illinois Attorney General's office to seek immediate injunctive relief in circumstances of substantial danger to the environment or to the public health of persons. EPA proposes that Illinois has met the applicable infrastructure SIP requirements for this portion of section 110(a)(2)(G) with respect to the 2008 Pb NAAQS.

Michigan R 324.5518 of Act 451 provides MDEQ with the authority to require the immediate discontinuation of air contaminant discharges that constitute an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment. Furthermore, R 324.5530 of Act 451 provides for civil action by the Michigan Attorney General

for violations described in R 324.5518. EPA proposes that Michigan has met the applicable infrastructure SIP requirements for this portion of section 110(a)(2)(G) with respect to the 2008 Pb NAAQS.

Minnesota Statute 116.11 and Chapter 7000.5000 of the Minnesota SIP contain the emergency powers set forth in the state. Specifically, these regulations allow the agency to direct the immediate discontinuance or abatement of the pollution without notice and without a hearing, or at the request of the agency, the Attorney General may bring an action in the name of the state in the appropriate district court for a temporary restraining order to immediately abate or prevent the pollution. EPA proposes that Minnesota has met the applicable infrastructure SIP requirements for this portion of section 110(a)(2)(G) with respect to the 2008 Pb NAAQS.

WS chapter 285.85 provides the requirement for WDNR to act upon a finding that episode or emergency conditions exist. 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 2008 Pb NAAQS.

As indicated in the 2011 Memo, EPA believes that the central components of a contingency plan for the 2008 Pb NAAQS would be to reduce emissions from the source at issue and to communicate with the public as needed. Where a state believes, based on its inventory of Pb sources and historic monitoring data, that it does not need a more specific contingency plan beyond having authority to restrain any source from causing or contributing to an imminent and substantial endangerment, then the state could provide such a detailed rationale in place of a specific contingency plan.

EPA has reviewed historic data at Pb monitoring sites throughout Illinois, Michigan, Minnesota, and Wisconsin, and believes that a specific contingency plan beyond having authority to restrain any source from causing or contributing to an imminent and substantial endangerment is not necessary at this time. For example, one way to quantify the possibility of imminent and substantial endangerment in this context would be a daily monitored value for Pb that could by itself cause a violation of the 2008 Pb NAAQS.²³ EPA has reviewed data from 2011 - 2013 (the most recent consecutive 36-month block of complete data) and observes that no such daily monitored value exists. As described in the section detailing interstate

²³ See appendix R to 40 CFR Part 50 for data handling conventions and computations necessary for determining when the NAAQS are met.

transport of Pb, EPA does not anticipate other areas in these states needing specific contingency measures due to low Pb emissions. EPA proposes that Illinois, Michigan, Minnesota, and Wisconsin have met the applicable infrastructure SIP requirements of section 110(a)(2)(G) related to contingency measures for the 2008 Pb 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, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

As previously mentioned, 415 ILCS 5/4 and 415 ILCS 5/10 provide the Director of Illinois EPA, in conjunction with IPCB, with the authority to develop rules and regulations necessary to meet ambient air quality standards. Furthermore, they have the authority to respond to any EPA findings of inadequacy with the Illinois SIP program. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2008 Pb NAAQS.

Michigan Act 451 324.5503 and 324.5512 provide the authority to: promulgate rules to establish standards for ambient air quality and emissions; issue, deny, revoke, or reissue permits; make findings of fact and determinations; make, modify, or cancel orders that require the control of air

pollution and/or permits rules and regulations necessary to meet NAAQS; and prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for control or prevention of any new air pollution. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to 2008 Pb NAAQS.

Minnesota Statute chapter 116.07 grants the agency the authority to "[a]dopt, amend, and rescind rules and standards having the force of law relating to any purpose . . . for the prevention, abatement, or control of air pollution." EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2008 Pb NAAQS.

WS chapter 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 findings of inadequacy with 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 2008 Pb NAAQS.

I. Section 110(a)(2)(I) - Nonattainment area plan or plan revisions under 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 takes action on part D attainment plans through separate processes.

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

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

Sub-element 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.

Illinois EPA is required to give notice to the Office of the Attorney General and the Illinois Department of Natural Resources during the rulemaking process. Furthermore, Illinois provides notice to reasonably anticipated stakeholders and interested parties, as well as to any FLM if the rulemaking applies to Federal land which the FLM has authority over. Additionally, Illinois EPA participates in the Lake Michigan Air Director's Consortium (LADCO), which consists of collaboration

with the states of Indiana, Michigan, Minnesota, Ohio, and Wisconsin. EPA proposes that Illinois has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb NAAQS.

MDEQ actively participates in planning efforts that include stakeholders from local governments, the business community, and community activist groups. MDEQ also routinely involves FLMs and Tribal groups in Michigan SIP development. Michigan is also an active member of LADCO. Therefore, EPA proposes that Michigan has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb NAAQS.

Historically, MPCA actively participated in the Central Regional Air Planning Association as well as the Central States Air Resource Agencies. MPCA is now a full-time member of LADCO, and it has also demonstrated that it frequently consults and discusses issues with pertinent Tribes. Therefore, EPA proposes that Minnesota has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb NAAQS.

WS chapter 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 the agency 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 LADCO. EPA proposes that Wisconsin has satisfied the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb NAAQS.

Sub-element 2: Public notification.

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

Illinois EPA continues to collaborate with the Cook County Department of Environmental Control. This consists of: continued and routine monitoring of air quality throughout the State, and notifying the public when unhealthy air quality is measured or forecasted. Specific to Pb, Illinois EPA maintains a publicly available website that allows interested members of the community and other stakeholders to obtain information about the adverse health effects associated with Pb, as well as the efforts being taken to mitigate elevated levels of Pb.²⁴ EPA

²⁴ See <http://www.epa.state.il.us/community-relations/fact-sheets/pilsen-neighborhood-lead/fact-sheet-1.html>

proposes that Illinois has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb NAAQS.

MDEQ posts current air quality concentrations on its web pages, and prepares an annual air quality report. Specific to Pb, the agency maintains a web site devoted to informing the public and other interested parties of the health and environmental effects associated with exposure to Pb, as well as resources for retailers who recycle batteries containing Pb. Lastly, the Pb oriented web site contains information relating to the nonattainment area in Ionia County including: monitored values of Pb in Ionia County as well as other sites in Michigan, technical information about the nonattainment designation, soil sampling data, public outreach documents, and ways that the state is addressing the elevated levels of Pb in Ionia County.²⁵ EPA proposes that Michigan has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb NAAQS.

Minnesota dedicates portions of the MPCA website to enhancing public awareness of measures that can be taken to prevent exceedances. For example, information on these pages includes ways to reduce Pb exposure,²⁶ as well as the biennial

25 See http://www.michigan.gov/deq/0,4561,7-135-3307_29693_30031-244345--,00.html

26 See <http://www.pca.state.mn.us/index.php/waste/waste-and-cleanup/waste->

reports that MPCA prepares for the state legislature.²⁷ EPA proposes that Minnesota has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb NAAQS.

WDNR maintains portions of its web site specifically for issues related to the 2008 Pb NAAQS.²⁸ Information related to the one Pb monitoring site can be found on Wisconsin's web site, 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 2008 Pb NAAQS.

Sub-element 3: PSD.

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Each state's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and 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). Our proposed actions are reiterated below.

management/lead.html

²⁷ See <http://www.pca.state.mn.us/index.php/about-mpca/legislative-resources/legislative-reports/air-quality-in-minnesota-reports-to-the-legislature.html>

²⁸ <http://dnr.wi.gov/topic/AirQuality/Pollutants.html>

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two states, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules contain the applicable provisions contained in the Phase 2 Rule, the 2008 NSR Rule, the 2010 NSR Rule, and the GHG thresholds as outlined in the Tailoring Rule. EPA acknowledges that the states have not satisfied the requirement for a SIP submission, which results in a proposed disapproval with respect to these requirements. However, Illinois and Minnesota have no further obligations to EPA because both states administer the Federally promulgated PSD regulations.

Michigan has submitted revisions to its PSD regulations that are wholly consistent with the EPA's requirements contained in the Phase 2 Rule, the 2008 NSR Rule, and the 2010 Rule. EPA approved these revisions on April 4, 2014 (*see* 79 FR 18802) and we are proposing that Michigan has met the applicable infrastructure SIP requirements for the 2008 Pb NAAQS as they relate to the requirements obligated by EPA's PSD regulations. We are also proposing that Michigan has met the applicable PSD requirements associated with the permitting of GHG emitting

sources consistent with the thresholds laid out in the Tailoring Rule.

In today's action, EPA is not proposing to approve or disapprove Wisconsin's satisfaction of the structural PSD elements for infrastructure SIPs, including the requirements obligated by the Phase 2 Rule, the 2008 NSR Rule, and the 2010 NSR Rule. Further, we are not proposing to approve or disapprove Wisconsin's satisfaction of the applicable PSD requirements associated with the permitting of GHG emitting sources consistent with the thresholds laid out in the Tailoring Rule. We will address Wisconsin's compliance with all of these requirements in a separate rulemaking.

Sub-element 4: Visibility protection.

With regard to the applicable requirements for 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 2008 Pb NAAQS.

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

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

Illinois EPA maintains the capability to perform modeling of the air quality impacts of emissions of all criteria pollutants, including the capability to use complex photochemical grid models. This modeling is used in support of the SIP for all nonattainment areas in the state. Illinois EPA also requires air quality modeling in support of permitting the construction of major and some minor new sources under the PSD program. These modeling data are available to EPA as well as the public upon request. Lastly, Illinois EPA participates in LADCO, which conducts regional modeling that is used for statewide planning purposes. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2008 Pb NAAQS.

MDEQ reviews the potential impact of major and some minor new sources, consistent with 40 CFR part 51, appendix W, "Guidelines on Air Quality Models." These modeling data are available to EPA upon request. Michigan also participates and coordinates with the other LADCO states on regional planning efforts. EPA proposes that Michigan has met the infrastructure

SIP requirements of section 110(a)(2)(K) with respect to the 2008 Pb NAAQS.

MPCA reviews the potential impact of major and some minor new sources. Under R 7007.0500, MPCA may require applicable major sources in Minnesota to perform modeling to show that emissions do not cause or contribute to a violation of any NAAQS. Furthermore, MPCA maintains the capability to perform its own modeling. Because Minnesota administers the Federally promulgated PSD regulations, pre-construction permitting modeling is conducted in compliance with EPA's regulations. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2008 Pb NAAQS.

WDNR maintains the capability to perform 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 order to perform modeling. The authorities to perform modeling in Wisconsin reside in WS chapter 285.11, WS chapter 285.13, and WS chapter 285.60 - 285.69. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2008 Pb 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.

Illinois EPA implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62946) and the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits are contained in 415 ILCS 5/39.5. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2008 Pb NAAQS.

MDEQ implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62949); revisions to the program were approved on November 10, 2003 (68 FR 63735). Section 324.5522 of Act 451 confers upon MDEQ the authority to levy and collect an annual air quality fee from owners or operators of each fee-subject facility in Michigan as defined in R 336.1212. Michigan R 336.1201 contains the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2008 Pb NAAQS.

MPCA implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62967). Minnesota

Rules 7002.0005 through 7002.0085 contain the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2008 Pb NAAQS.

WDNR implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62951); revisions to the program were approved on February 28, 2006 (71 FR 9934). Wisconsin 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 2008 Pb 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.

All public participation procedures pertaining to Illinois EPA are consistent with 35 Illinois Administrative Code Part 164 and Part 252. Part 252 is an approved portion of Illinois' SIP. EPA proposes that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2008 Pb NAAQS.

In Michigan, memoranda of understanding regarding consultation or participation in the SIP development process have been entered between MDEQ and local political subdivisions. MDEQ also provides opportunity for stakeholder workgroup participation in rule development processes. Public comment periods, and hearings, if requested, are held in accordance with the requirements in 40 CFR 51. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2008 Pb NAAQS.

Minnesota regularly consults with local political subdivisions affected by the SIP, where applicable. EPA observes that Minnesota Statute chapter 116.05 authorizes cooperation and agreement between MPCA and other State and local governments. Additionally, the Minnesota Administrative Procedures Act (Minnesota Statute chapter 14) provides general notice and comment procedures that are followed during SIP development. Lastly, MPCA regularly issues public notices on proposed actions. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2008 Pb NAAQS.

In addition to the measures outlined in the paragraph addressing WDNR's submittal regarding consultation requirements of section 110(a)(2)(J), as contained in WS chapter 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 2008 Pb NAAQS.

V. What action is EPA taking?

EPA is proposing to approve most elements of submissions from Illinois, Michigan, Minnesota, and Wisconsin certifying that their current SIPs are sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2008 Pb NAAQS. We are also proposing to disapprove some elements of submissions from Illinois and Minnesota as they relate to each state's PSD program. As described above, both of these states already administer federally promulgated PSD regulations through delegation, and therefore no practical effect is associated with today's proposed disapproval or future final disapproval of those elements.

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

Element	IL	MI	MN	WI
(A): Emission limits and other control measures	A	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A	A
(C)1: Enforcement of SIP measures	A	A	A	A
(C)2: PSD program for Pb	D, *	A	D, *	NA
(C)3: NOx as a precursor to ozone for PSD	D, *	A	D, *	NA
(C)4: PM _{2.5} Precursors / PM _{2.5} and PM ₁₀ condensables for PSD	D, *	A	D, *	NA
(C)5: PM _{2.5} Increments	D, *	A	D, *	NA
(C)5: GHG permitting thresholds in PSD regulations	D, *	A	D, *	NA
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A	A	A	A
(D)2: PSD	**	**	**	**
(D)3: Visibility Protection	A	A	A	A
(D)4: Interstate Pollution Abatement	D, *	A	D, *	A
(D)5: International Pollution Abatement	A	A	A	A
(E): Adequate resources	A	A	A	A
(E): State boards	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A
(G): Emergency power	A	A	A	A
(H): Future SIP revisions	A	A	A	A
(I): Nonattainment area plan or plan revisions under part D	NA	NA	NA	NA
(J)1: Consultation with government officials	A	A	A	A
(J)2: Public notification	A	A	A	A
(J)3: PSD	**	**	**	**
(J)4: Visibility protection	+	+	+	+
(K): Air quality modeling and data	A	A	A	A
(L): Permitting fees	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A

In the above table, the key is as follows:

A	Approve
NA	No Action / Separate Rulemaking
D	Disapprove
+	Not germane to infrastructure SIPs
*	Federally promulgated rules in place
**	Previously discussed in element (C)

To clarify, EPA is proposing to disapprove the infrastructure SIP submissions from Illinois and Minnesota with

respect to certain PSD requirements including: (i) provisions that adequately address the 2008 Pb NAAQS; (ii) the explicit identification of NO_x as a precursor to ozone consistent with the Phase 2 Rule; (iii) the explicit identification of SO₂ and NO_x as PM_{2.5} precursors (and the significant emissions rates for direct PM_{2.5}, and SO₂ and NO_x as its precursors), and the regulation of PM_{2.5} and PM₁₀ condensables, consistent with the requirements of the 2008 NSR Rule; (iv) the PM_{2.5} increments and associated implementation rules consistent with the 2010 NSR Rule; and, (v) permitting of GHG emitting sources at the Federal Tailoring Rule thresholds.

EPA is also proposing to disapprove 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).

However, Illinois and Minnesota have no further obligations to EPA 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. A final disapproval for Illinois or 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 administering the federally promulgated PSD regulations.

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 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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 reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: May 2, 2014.

Susan Hedman,
Regional Administrator, Region 5.

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