



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2012-0974, FRL-9935-15-Region 8]

**Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Ozone, 2008 Lead, and 2010 NO<sub>2</sub> National Ambient Air Quality Standards; North Dakota**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) revisions from the State of North Dakota to demonstrate the State meets infrastructure requirements of the Clean Air Act (Act, CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on March 12, 2008; lead (Pb) on October 15, 2008; and nitrogen dioxide (NO<sub>2</sub>) on January 22, 2010. Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA.

**DATES:** This rule is effective [insert date 30 days after date of publication in the federal register].

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification Number EPA-R08-OAR-2012-0974. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information may not be

publicly available, i.e., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in the hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 8, Office of Partnerships and Regulatory Assistance, Air Program, 1595 Wynkoop Street, Denver, Colorado, 80202-1129. The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. - 4:00 p.m., excluding federal holidays. An electronic copy of the State's SIP compilation is also available at <http://www.epa.gov/region8/air/sip.html>.

**FOR FURTHER INFORMATION CONTACT:** Abby Fulton, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, 303-312-6563, [fulton.abby@epa.gov](mailto:fulton.abby@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Infrastructure requirements for SIPs are provided in section 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our notice of proposed rulemaking (NPR) published on July 15, 2015 (80 FR 41450).

The NPR proposed approval of North Dakota's submissions with respect to the following CAA section 110(a)(2) infrastructure elements for the 2008 ozone, 2008 Pb, and 2010 NO<sub>2</sub> NAAQS: (A), (B), (C) with respect to minor NSR and PSD requirements, (D)(i)(II) elements 3

and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M); and D(i)(I) elements 1 and 2 for the 2008 Pb and 2010 NO<sub>2</sub> NAAQS. The NPR also proposed approval of element 4 of CAA section 110(a)(2)(D)(i)(II) for the 2006 fine particulate matter (PM<sub>2.5</sub>) NAAQS. EPA will act separately on infrastructure element (D)(i)(I), interstate transport elements 1 and 2 for the 2008 ozone NAAQS. The reasons for our approvals are provided in detail in the NPR.

## **II. Response to Comments**

No comments were received on our July 15, 2015 NPR.

## **III. Final Action**

EPA is approving the following infrastructure elements for the 2008 ozone, 2008 Pb, and 2010 NO<sub>2</sub> NAAQS: CAA 110(a)(2) (A), (B), (C) with respect to minor NSR and PSD requirements, (D)(i)(II) elements 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is approving element 4 of 110(a)(2)(D)(i)(II) for the 2006 PM<sub>2.5</sub> NAAQS. Finally, EPA is approving D(i)(I) elements 1 and 2 for the 2008 Pb and 2010 NO<sub>2</sub> NAAQS. EPA will act separately on infrastructure element (D)(i)(I), interstate transport elements 1 and 2 for the 2008 ozone NAAQS.<sup>1</sup>

## **IV. Statutory and Executive Orders Review**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 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 relevant state

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<sup>1</sup> This action also corrects an error to a federal register citation in our NPR (80 FR 41450, July 15, 2015) on page 41454. The NPR incorrectly cites approval of the State's SIP-approved minor NSR program at 60 FR 43401 rather than the correct citation of 42 FR 26977 (May 26, 1977).

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, Oct. 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 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 USC 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, Aug. 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 USC 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, Feb. 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 21, 2015.

Shaun L. McGrath,  
Regional Administrator,  
Region 8.

40 CFR part 52 is amended to read as follows:

**PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart JJ- North Dakota**

2. Section 52.1833 is amended by adding paragraph (d) to read as follows:

**§ 52.1833 Section 110(a)(2) infrastructure requirements.**

\* \* \* \* \*

(d) EPA is approving the following infrastructure elements for the 2008 ozone, 2008 Pb, and 2010 NO<sub>2</sub> NAAQS: CAA 110(a)(2) (A), (B), (C) with respect to minor NSR and PSD requirements, (D)(i)(II) elements 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is approving element 4 of 110(a)(2)(D)(i)(II) for the 2006 PM<sub>2.5</sub> NAAQS. Finally, EPA is approving D(i)(I) elements 1 and 2 for the 2008 Pb and 2010 NO<sub>2</sub> NAAQS.