



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2016-0327; FRL-9964-95-Region 5]**

**Air Plan Approval; Minnesota; State Board Requirements**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) submission from Minnesota addressing the state board requirements of the Clean Air Act (CAA). EPA is also proposing to approve elements of Minnesota's submission addressing the infrastructure requirements relating to state boards for the 1997 ozone, 1997 fine particulate (PM<sub>2.5</sub>), 2006 PM<sub>2.5</sub>, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), 2010 sulfur dioxide (SO<sub>2</sub>), and 2012 PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS). This SIP revision was submitted by the Minnesota Pollution Control Agency (MPCA) on May 26, 2016.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2016-0327 at <https://www.regulations.gov>, or via email to [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov). For comments submitted at

Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604,  
(312) 353-4489, [svingen.eric@epa.gov](mailto:svingen.eric@epa.gov).

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

- I. What is the background of this SIP submission?
- II. What guidance is EPA using to evaluate this SIP submission?
- III. What is the result of EPA’s review of this SIP submission?
- IV. What action is EPA taking?
- V. Incorporation by Reference.
- VI. Statutory and Executive Order Reviews.

**I. What is the background of this SIP submission?**

This rulemaking addresses a SIP submission from the MPCA dated May 26, 2016, which addresses CAA requirements relating to the state board requirements under section 128, as well as infrastructure requirements of section 110 relating to state boards for the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

The requirement for states to make infrastructure SIP submissions 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 section 110(a)(1) and (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. This specific rulemaking is only taking action on the CAA 110(a)(2)(E)(ii) element of these infrastructure SIP requirements.

## **II. What guidance is EPA using to evaluate this SIP submission?**

EPA’s guidance relating to infrastructure SIP submissions can be found in a guidance document entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub><sup>1</sup> National Ambient Air Quality Standards”

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<sup>1</sup> PM<sub>2.5</sub> refers to particles with an aerodynamic diameter of less than or equal

(2007 Guidance). Further guidance is provided in a September 13, 2013, document entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and (2)" (2013 Guidance).

### **III. What is the result of EPA's review of this SIP submission?**

Pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. MPCA provided public notice for the SIP revision on April 4, 2016, commenced a public comment period on April 5, 2016, and closed the public comment period on May 5, 2016. No comments were received nor were there any requests for a public hearing.

Minnesota provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in sections 128 and 110(a)(2)(E)(ii) for the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS, as applicable. The following review evaluates the state's submission.

#### **A. Section 128**

Section 128 of the CAA includes just one subsection labeled "(a)," which contains two explicit requirements, that: "(1) any board or body which approves permits or enforcement orders under

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to 2.5 micrometers, oftentimes referred to as "fine" particles.

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 (2) 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." Minnesota has no board or body which approves permits or enforcement orders in relation to the CAA. Under Minnesota Statutes (Minn. Stat.), the administrative powers and duties of the MPCA, including issuance of permits and enforcement orders, are vested in the Commissioner of the MPCA. Therefore, Minnesota has no further obligations under section 128(a)(1) of the CAA.

Under section 128(a)(2) of the CAA, the head of the executive agency with the power to approve permits or enforcement orders must adequately disclose any potential conflicts of interest. In Minnesota, this power is vested in the Commissioner of the MPCA. Minnesota's statutes and rules require disclosure by public officials of any potential conflict of interest. Under Minn. Stat. 10A, matters of disclosure and public interest are governed by the Minnesota Campaign Finance and Public Disclosure Board (MCFPDB). Minn. Stat. 10A.09 requires that statements of economic interest be filed with the

MCFPDB upon the nomination of the Commissioner, and a supplementary statement must be submitted every year thereafter. Under Minn. Stat. 10A.07, if the Commissioner has a financial interest relating to a matter before the agency, he or she must make this interest known in writing. Decision-making responsibility on the matter must be assigned by the Governor to another employee who does not have a conflict of interest, or the Commissioner must abstain from influence over the matter in a manner prescribed by the MCFPDB. Minnesota Rules (Minn. R.) 7000.0300 further prescribes a "duty of candor" for the Commissioner: "In all formal or informal negotiations, communications, proceedings, and other dealings between any person and any member, employee, or agent of the board or commissioner, it shall be the duty of each person and each member, employee, or agent of the board or commissioner to act in good faith and with complete truthfulness, accuracy, disclosure, and candor."

In its May 26, 2016 submission, MPCA requested that EPA incorporate Minn. Stat. 10A.07, Minn. Stat. 10A.09, and Minn. R. 7000.0300 into Minnesota's SIP. In this action, EPA proposes to approve Minnesota's request to incorporate these statutes and rule into the SIP, and further proposes that these statutes and rule satisfy all requirements under section 128 of the CAA.

**B. Section 110(a)(2)(E)(ii)**

Section 110(a)(2)(E)(ii) of the CAA also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA.

In its submission dated May 26, 2016, MPCA requested that Minn. Stat. 10A.07, Minn. Stat. 10A.09, and Minn. R. 7000.0300 be applied not only to obligations under section 128 of the CAA, but also to infrastructure SIP requirements for the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS. EPA therefore proposes that Minnesota has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E)(ii) with respect to the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

**IV. What action is EPA taking?**

EPA is proposing to incorporate Minn. Stat. 10A.07, Minn. Stat. 10A.09, and Minn. R. 7000.0300 into Minnesota's SIP. EPA is further proposing to approve this submission as meeting CAA obligations under section 128, as well as 110(a)(2)(E)(ii) for the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 Pb, 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

**V. Incorporation by Reference.**

In this rulemaking, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Minn. Stat. 10A.07 "Conflicts of Interest.", effective May 25, 2013, Minn. Stat. 10A.09 "Statements of Economic Interest.", effective May 25, 2013, and Minn. R. 7000.0300 "Duty of Candor.", effective April 19, 2004. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov>, and/or at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

#### **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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

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

Dated: July 6, 2017.

Cheryl L. Newton,  
Acting Regional Administrator, Region 5.

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