



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2016-0327; FRL-9971-61-Region 5]**

**Air Plan Approval; Minnesota; 2008 Ozone Transport**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a May 26, 2016, State Implementation Plan (SIP) submission from Minnesota that is intended to demonstrate that the Minnesota SIP meets certain interstate transport requirements of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). EPA is approving this SIP as containing adequate provisions to ensure that Minnesota emissions do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state. The proposed rulemaking associated with this final action was published on July 17, 2017, and EPA received no comments during the comment period, which ended on August 16, 2017.

**DATES:** This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0327. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although

listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through [www.regulations.gov](http://www.regulations.gov) or at the 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 Eric Svingen, Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

**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. Background.

II. EPA's analysis of Minnesota's submittal.

III. What action is EPA taking?

#### IV. Statutory and Executive Order Reviews.

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

On March 12, 2008, EPA revised the levels of the primary and secondary ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable "infrastructure" elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain "good neighbor" provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements within CAA section 110(a)(2)(D)(i). This action addresses the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I). These sub-elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will "contribute significantly to nonattainment" or "interfere with maintenance" of the applicable air quality standard in any other state.

##### **II. EPA's analysis of Minnesota's submittal.**

On May 26, 2016, the State of Minnesota submitted a revision to its SIP to address the first two sub-elements of the

good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I). Specifically, Minnesota's submission asserts that the state's SIP contains adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will "contribute significantly to nonattainment" or "interfere with maintenance" of the 2008 ozone standard in any other state. The SIP submission highlights rules and statutes already in Minnesota's SIP that limit emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC), the precursor pollutants contributing to ozone formation. The submission also notes that Minnesota sources are subject to a Federal Implementation Plan (FIP) for the Cross-State Air Pollution Rule (CSAPR) at 40 CFR 52.1240, and are required to reduce annual emissions of NO<sub>x</sub> in support of the 2006 NAAQS for fine particulate matter (PM<sub>2.5</sub>).

EPA developed technical information and a related analysis to assist states with meeting section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone NAAQS, and used this technical analysis to support the CSAPR Update for the 2008 Ozone NAAQS ("CSAPR Update").<sup>1</sup> EPA's analysis confirms the assertion in Minnesota's submittal: Minnesota does not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone standard in any other state.

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<sup>1</sup> 81 FR 74504 (October 26, 2016).

On July 17, 2017 (82 FR 32673), EPA published a rule proposing to approve Minnesota's interstate transport SIP for purposes of meeting the CAA section 110(a)(2)(D)(i)(I) requirements of the 2008 ozone standard. This proposed rule contained a detailed evaluation of how Minnesota's submission satisfies CAA requirements. No comments were received. Therefore, EPA is finalizing this rule as proposed.

### **III. What action is EPA taking?**

EPA is approving Minnesota's interstate transport SIP for purposes of meeting the CAA section 110(a)(2)(D)(i)(I) requirements of the 2008 ozone standard.

### **IV. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders

12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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).

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 CAA, 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 section 307(b)(2).)

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

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: November 17, 2017.

Robert A. Kaplan,  
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended 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.*

2. In § 52.1220, the table in paragraph (e) is amended by revising the entry for “Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS” to read as follows:

**§ 52.1220 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

EPA--APPROVED MINNESOTA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date / effective date	EPA approved date	Comments
* * * * *	* * *	*		
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS	Statewide	6/12/2014 and 5/26/2016	[insert the date of publication in the Federal Register], [Insert Federal Register citation]	These actions address the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We have not taken action on the visibility portion of (D)(i)(II). We will address these requirements in a separate action. EPA has disapproved the elements related to the prevention of significant deterioration, specifically as they

				pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.		
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[FR Doc. 2017-26539 Filed: 12/8/2017 8:45 am; Publication Date: 12/11/2017]