



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0157; FRL-9979-32-Region 5]

Air Plan Approval; Wisconsin; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the regional haze progress report under the Clean Air Act (CAA) as a revision to the Wisconsin state implementation plan (SIP). Wisconsin has satisfied the progress report requirements of the Regional Haze Rule. Wisconsin has also provided a determination of the adequacy of its regional haze plan with the progress report.

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

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2017-0157. All documents in the docket are listed on the 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 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 Gilberto Alvarez, Environmental Scientist, at (312) 886-6143 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Gilberto Alvarez, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6143, alvarez.gilberto@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. What is EPA's response to the comments?
- III. What Action is EPA Taking?
- IV. Statutory and Executive Order Reviews.

I. Background

States are required to periodically submit a progress report that evaluates progress towards the Reasonable Progress Goals (RPGs) for each mandatory Class I Federal area within the

State and in each mandatory Class I Federal area outside the State which may be affected by emissions from within the state. See 40 CFR 51.308(g). States are also required to submit, at the same time as the progress report, a determination of the adequacy of the State's existing regional haze SIP. See 40 CFR 51.308(h). The first progress report is due five years after the submittal of the initial regional haze SIP.

Wisconsin submitted its regional haze plan on January 18, 2012. EPA approved Wisconsin's regional haze plan into its SIP on August 7, 2012 (77 FR 46952). Wisconsin submitted its five-year progress report on March 17, 2017. This is a report on the implementation of the regional haze plan and the progress made in the first implementation period towards RPGs for Class I areas outside of Wisconsin. Wisconsin does not have any Class I areas within its borders where visibility is an important value. This progress report SIP included a determination that Wisconsin's existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018 for Class I areas impacted by Wisconsin emissions. EPA is approving Wisconsin's progress report on the basis that it satisfies the applicable requirements of the rule at 40 CFR 51.308.

EPA published a direct final rule (DFR) on October 20, 2017 (82 FR 48766), approving the Wisconsin regional haze progress

report as a revision to the Wisconsin SIP, along with a proposed rule (82 FR 48780), that provided a 30-day public comment period. The DFR evaluated the Wisconsin submittal assessing its progress in implementing its regional haze plan during the first half of the first implementation period as well as the statutory and regulatory background for EPA's review of Wisconsin's regional haze plan. The DFR also provided a description of the regional haze requirements addressed in the Wisconsin progress report. The DFR serves as the detailed basis for this action. The adverse comments that EPA received are addressed below.

II. What is EPA's response to the comments?

EPA received two relevant comments on the DFR. One commenter supported the approval of the regional haze 5-year progress report SIP. A second commenter expressed concern over Cross State Air Pollution Rule (CSAPR) issues and measures not approved into the SIP. We address the second commenter's concerns here.

Comment - The commenter argued that EPA cannot approve the Wisconsin regional haze 5-year progress report because the State must revise its regional haze SIP to replace reliance on the Clean Air Interstate Rule (CAIR) and CSAPR with reliance on the "CSAPR Update." The commenter stated that as CAIR and CSAPR are no longer in effect, these rules cannot be relied on for achieving reasonable progress goals, and that states cannot rely

on federal implementation plans (FIPs) as measures must be contained in the SIP. The commenter also claimed that Wisconsin is taking credit for consent decrees, an Administrative Order on Consent for Georgia Pacific that is not approved into the SIP, and limits in title V permits that are not approved into the SIP. The commenter argued that because such measures are not federally enforceable, Wisconsin cannot take credit for them in its regional haze SIP. The commenter also argued that EPA cannot allow states to rely on trading programs to meet the source specific requirements for best available retrofit technology (BART).

EPA's Response - In its regional haze SIP, Wisconsin relied on participation in CSAPR to satisfy certain of the BART requirements for its subject electric generating units and to satisfy reasonable progress requirements for these sources. In its progress report, Wisconsin notes that significant contribution towards reasonable progress has been made through implementation of CAIR and CSAPR in the State. Although EPA promulgated CSAPR on August 8, 2011 (76 FR 48208), the timing of CSAPR's implementation was impacted by several court actions. EPA began implementing CSAPR on January 1, 2015, and CSAPR is now in force. The commenter, however, argues that because CSAPR has been recently modified, "CSAPR" as referenced in the EPA-approved Wisconsin BART SIP element is no longer in effect.

Similarly, the commenter also states that because CAIR is no longer in effect, the State may not rely on CAIR to achieve reasonable progress goals.

EPA disagrees with the commenter for several reasons. First, although CAIR is no longer in effect, it was in effect during part of the time period addressed by the progress report. Thus, Wisconsin appropriately described reductions from CAIR in summarizing the emissions reductions achieved during the initial years of the first implementation period. Second, contrary to the commenter's assertion, CSAPR remains in effect and will continue to result in emissions reductions in Wisconsin and other states subject to the rule. The D.C. Circuit affirmed CSAPR in most respects in 2015. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015). In that decision, the court remanded, without vacating, some of the CSAPR budgets for a number of states. At this point, however, EPA has now taken all actions necessary to respond to that remand, and Wisconsin remains subject to CSAPR following EPA's actions. We also note that on September 29, 2017, EPA finalized a determination that the changes to the scope of CSAPR coverage following our actions on the remand do not alter EPA's conclusion that CSAPR remains better-than-BART. (82 FR 45481). Accordingly, we do not agree that Wisconsin erred in relying on CAIR and CSAPR in its progress report for ensuring the necessary emission reductions.

We also do not agree that States may not rely on FIPs in considering whether a regional haze implementation plan is sufficient to achieve the reasonable progress goals for nearby Class I areas. The Regional Haze Rule defines "implementation plan" for purposes of the visibility program to mean "any [SIP], [FIP], or Tribal Implementation Plan.". 40 CFR 51.301. Given this, measures in any issued FIP as well as those in a state's regional haze plan may be relied on in assessing the adequacy of the "existing implementation plan" under 40 CFR 51.308(g)(6) and (h).

The commenter also stated that Wisconsin is inappropriately taking credit in its progress report for consent decrees, an Administrative Consent Order for Georgia Pacific, and title V permits, none of which, the commenter claimed, are approved into the SIP. Again, we disagree with this comment for several reasons. First, with respect to Georgia Pacific, Wisconsin does describe the Administrative Consent Order for the source as a key element of its regional haze SIP; however, the Administrative Consent Order is incorporated by reference into the SIP. See 40 CFR 52.2570(c)(124)(i)(A). Second, it is unclear for which other consent decrees or title V permits Wisconsin is "taking credit" or in what way, but states in general are required to consider emission reductions due to ongoing air pollution control programs in developing a long-term

strategy. 40 CFR 51.308(d)(3)(v). Given this, it is appropriate for a state to include a discussion in the progress report of the status of measures the state relied on in developing its long-term strategy.

Finally, the regulations governing progress reports do not include a requirement for states (or EPA) to ensure that all applicable regional haze requirements for the planning period have been met by the existing plan. As such, the comment raising concerns about the reliance on a regional trading program to satisfy the BART requirement raises issues outside the scope of this rulemaking. We do note, however, that 40 CFR 51.308(e)(4) explicitly allows a state to rely on participation in a CSAPR FIP to address the BART requirements for electric generating units (EGUs). See Utility Air Regulatory Group v. EPA, 885 F.3d 714, 721 (D.C. Cir. 2018) (upholding CSAPR as a BART alternative); see also National Parks Conservation Association v. McCarthy, 816 F.3d 989 (8th Cir. 2016).

In summary, EPA disagrees that the points raised by the commenter prevent approval of the progress report EPA finds that Wisconsin's progress report satisfies 40 CFR 51.308.

III. What Action is EPA Taking?

EPA is approving the Wisconsin regional haze progress report under the CAA as a revision to the Wisconsin SIP. EPA finds that Wisconsin has satisfied the progress report

requirements of the Regional Haze Rule. Wisconsin has also met the requirements for a determination of the adequacy of its regional haze plan with its negative declaration submitted with the progress report.

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 this action does not involve technical standards; 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, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 4, 2018.

Cathy Stepp,
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. Section 52.2593 is added to read as follows:

§52.2593 Visibility protection.

(a) *Approval.* Wisconsin submitted its regional haze plan to EPA on January 18, 2012, supplemented on June 7, 2012. The Wisconsin regional haze plan meets the requirements of Clean Air Act section 169B and the Regional Haze Rule in 40 CFR 51.308.

(b) *Approval.* Wisconsin submitted its five-year progress report on March 17, 2017. The Progress Report meets the requirements of Clean Air Act sections 169A and 169B and the Regional Haze Rule in 40 CFR 51.308.