



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2018-0043; FRL-9993-53-Region 5]

**Air Plan Approval; Illinois; State Board and Infrastructure SIP
Requirements**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to Illinois's state implementation plan (SIP) addressing the state board requirements under section 128 of the Clean Air Act (CAA) and the related infrastructure element for several National Ambient Air Quality Standard (NAAQS) infrastructure submissions. 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.

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-2018-0043 at <http://www.regulations.gov>, or via email to 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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, 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) 886-9401.

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 is the result of EPA's review of this SIP submission?
- III. What action is EPA taking?
- IV. Incorporation by Reference.
- V. Statutory and Executive Order Reviews.

I. What is the background of this SIP submission?

A. What state SIP submission does this rulemaking address?

This rulemaking addresses a January 25, 2018 submission from the Illinois Environmental Protection Agency (IEPA). The state submission addresses section 128 requirements and revisions to infrastructure submissions for the 2006 fine particulate matter (PM_{2.5}), 2008 lead, 2008 ozone, 2010 nitrogen dioxide (NO₂), 2010 sulfur dioxide (SO₂), and 2012 PM_{2.5} NAAQS specific to element E. EPA is not acting on the 2012 PM_{2.5} NAAQS infrastructure revision in this rulemaking.

B. Why did the state make this SIP submission?

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an "infrastructure SIP." This submission must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret

these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.¹ Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.² EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

II. What is the result of EPA's review of this SIP submission?

Section 110(a)(2)(E) of the CAA 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 with respect to state boards under CAA section 128.

¹ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on Illinois's infrastructure SIP to address the 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS (79 FR 40693 (July 14, 2014)).

² See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (Aug. 30, 2018).

Under CAA sections 110(a)(2)(E)(i) and (iii), states are required to show they have adequate personnel, funding, and legal authority under state law to carry out its SIP and related issues. These requirements were previously approved for the infrastructure SIPs that are part of today's proposed rulemaking.³

CAA section 110(a)(2)(E) also requires that each SIP 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 the CAA 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 the CAA, 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.

On January 25, 2018, IEPA submitted 35 Ill. Adm. Code 101.112(d) for incorporation into the SIP, pursuant to section 128 of the CAA. This rule applies to the Illinois Pollution Control Board which has the authority to approve permits and enforcement orders. The language found in 35 Ill. Adm. Code

³ For 2006 PM_{2.5} see 77 FR 65478 (October 29, 2012); for 2008 lead see 79 FR 41439 (July 16, 2014); and for 2008 ozone, 2010 NO₂, and 2010 SO₂ see 79 FR 62042 (October 16, 2014).

101.112(d) is identical to the language in CAA section 128. EPA is proposing to find that this submittal meets the requirements of section 128 and satisfies the applicable requirements of CAA section 110(a)(2)(E)(ii) for the 2006 PM_{2.5}, 2008 lead, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS.

III. What action is EPA taking?

EPA is proposing to approve 35 Ill. Adm. Code 101.112(d) as satisfying the requirements of CAA section 128. EPA is also proposing to approve the infrastructure element under CAA section 110(a)(2)(E)(ii) for the 2006 PM_{2.5}, 2008 lead, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS. Final approval of this action will terminate the Federal Implementation Plan Clock started for the disapproval of CAA section 110(a)(2)(E)(ii) for the 2006 PM_{2.5} and 2008 ozone NAAQS (see 80 FR 51730 (August 26, 2015)).

IV. Incorporation by Reference.

In this rule, 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 a portion of 35 Ill. Adm. Code 101.112 "Bias and Conflict of Interest", specifically, Section 101.112(d), effective July 5, 2017. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please

contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: April 30, 2019.

Cheryl L Newton,
Acting Regional Administrator, Region 5.

[FR Doc. 2019-09919 Filed: 5/15/2019 8:45 am; Publication Date: 5/16/2019]