

for inclusion into Puerto Rico's SIP to address the requirements of Sections 110(a)(2)(E)(ii) and 128 of the CAA. EPA is further proposing to approve these submissions, which are intended to apply to any person subject to CAA 128, for inclusion into the SIP as meeting CAA obligations section 110(a)(2)(E)(ii) for the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 lead, and 2008 ozone NAAQS.

EPA is disapproving the following infrastructure SIP requirements as they relate to the PSD program for lack of a State adopted PSD rule to satisfy section 110(a)(2) for the 1997 and 2008 ozone NAAQS, 1997 and 2006 PM<sub>2.5</sub> NAAQS, and 2008 lead NAAQS: sections 110(a)(2)(C), (D)(i) prong 3, (D)(ii) and (J). It should be noted that a FIP clock will not be started because a PSD FIP is currently in place, and sanctions will not be triggered. Since Puerto Rico is not required to address the visibility portion of section 110(a)(2)(J) in the context of an infrastructure SIP, and therefore did not make a submission, action on this sub-element is not applicable.

## VI. 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, the EPA is proposing to incorporate by reference Puerto Rico's "Environmental Public Policy Act," Act No. 416 (2004, as amended), Section 7.A, and Section 7.D and "Puerto Rico Government Ethics Law," Act. No. 1 (approved January 3, 2012), Section 5. These provisions are intended to apply to any person subject to CAA Section 128. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations> (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VII. 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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, this proposed rulemaking action, pertaining to Puerto Rico's section 110(a)(2) infrastructure requirements for the 1997 and 2008 ozone NAAQS, 1997 and 2006 PM<sub>2.5</sub> NAAQS, and 2008 lead NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## List of Subjects in 40 CFR Part 52

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

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

Dated: February 9, 2016.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR part 52

[EPA-R05-OAR-2015-0529; FRL-9942-57-Region 5]

### Air Plan Approval; Wisconsin; Infrastructure SIP Requirements for the 2012 PM<sub>2.5</sub> NAAQS

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve some elements of a state implementation plan (SIP) submission from Wisconsin regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). 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 March 21, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2015-0529 at <http://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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

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**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. 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 submission from the Wisconsin Department of Natural Resources (WDNR). The state submitted its infrastructure SIP for the 2012 PM<sub>2.5</sub><sup>1</sup> NAAQS on July 13, 2015.

*B. Why did the state make this SIP submission?*

Under section 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance and enforcement of the NAAQS, including the 2012 PM<sub>2.5</sub> NAAQS. This submission must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, 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> National Ambient Air Quality Standards” (2007 Guidance) and has issued additional guidance documents, the most recent on September 13, 2013, entitled “Guidance on Infrastructure State Implementation

Plan (SIP) Elements under CAA Sections 110(a)(1) and 110(a)(2)” (2013 Guidance). The SIP submission referenced in this rulemaking pertains to the applicable requirements of section 110(a)(1) and (2), and addresses the 2012 PM<sub>2.5</sub> NAAQS.

*C. What is the scope of this rulemaking?*

EPA is acting upon the SIP submission from Wisconsin that addresses the infrastructure requirements of CAA section 110(a)(1) and (2) for the 2012 PM<sub>2.5</sub> NAAQS. The requirement for states to make SIP submissions of this type arises out of CAA 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, such as SIP submissions that address the nonattainment planning requirements of part D and the Prevention of Significant Deterioration (PSD) requirements of part C of title I of the CAA, and “regional haze SIP” submissions required to address the visibility protection requirements of CAA section 169A.

This rulemaking will not cover three substantive areas that are not integral to acting on a state’s infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (“SSM”) at sources, that may be contrary to the CAA and EPA’s policies addressing such excess emissions; (ii) existing provisions related to “director’s variance” or “director’s discretion” that purport to permit revisions to SIP-approved emissions limits with limited public notice or without requiring further

approval by EPA, that may be contrary to the CAA; and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA’s “Final NSR Improvement Rule,” 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (“NSR Reform”). Instead, EPA has the authority to address each one of these substantive areas in separate rulemakings. A detailed history, interpretation, and rationale as they relate to infrastructure SIP requirements can be found in EPA’s May 13, 2014, proposed rule entitled, “Approval and Promulgation of Air Quality Implementation Plans; Illinois, Michigan, Minnesota, Wisconsin; Infrastructure SIP Requirements for the 2008 Lead NAAQS” in the section, “What is the scope of this rulemaking?” (see 79 FR 27241 at 27242–27245).

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

EPA’s guidance for this infrastructure SIP submission is embodied in the 2007 Guidance referenced previously. Specifically, attachment A of the 2007 Guidance (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. As discussed, EPA issued additional guidance, the most recent being the 2013 Guidance that further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

**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. WDNR provided notice of a public comment period on May 19, 2015, held a public hearing at WDNR state Headquarters on June 17, 2015, and closed the public comment period on June 19, 2015. No comments were received during the WDNR’s public comment period.

Wisconsin provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2012 PM<sub>2.5</sub> NAAQS. The following review evaluates the state’s submission.

*A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures*

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, as well as schedules and timetables for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures

<sup>1</sup> PM<sub>2.5</sub> refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, oftentimes referred to as “fine” particles.

for attaining the standards as being due when nonattainment planning requirements are due.<sup>2</sup> In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Under Wisconsin Statutes (*Wis. Stats.*) 227 and 285, WDNR holds the authority to create new rules and implement existing emission limits and controls. Authority to monitor, update, and implement revisions to Wisconsin's SIP, including revisions to emission limits and control measures as necessary to meet NAAQS, is contained in *Wis. Stats.* 285.11–285.19. Authority related to specific pollutants, including the establishment of ambient air quality standards and increments, identification of nonattainment areas, air resource allocations, and performance and emissions standards, is contained in *Wis. Stats.* 285.21–285.29.

Specifically, authority for WDNR to create new rules and regulations is found in *Wis. Stats.* 227.11, 285.11, and 285.21. *Wis. Stats.* 227.11(2)(a) expressly confers rulemaking authority to an agency. *Wis. Stats.* 285.11(1) and (6) require that WDNR promulgate rules and establish control strategies in order to prepare and implement the SIP for the prevention, abatement, and control of air pollution in Wisconsin.

The 2013 Guidance states that to satisfy section 110(a)(2)(A) requirements, “an air agency’s submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS, including precursors of the relevant NAAQS pollutant where applicable.” The following current Wisconsin Administrative Code Chapters Natural Resources (NR) contain existing emission limits and control requirements that apply to particulate emissions:

Chapter NR 415, *Wis. Adm. Code*—

Control of Particulate Emissions  
Chapter NR 431, *Wis. Adm. Code*—

Control of Visible Emissions

These regulations can be applied to the 2012 PM<sub>2.5</sub> NAAQS.

On January 1, 2015, EPA began implementing the Cross-State Air Pollution Rule (CSAPR). Wisconsin is subject to CSAPR's requirements regarding annual oxides of nitrogen

(NO<sub>x</sub>) and SO<sub>2</sub> power plant emissions, which are intended to address transport of PM<sub>2.5</sub> to downwind states. EPA and WDNR expect that CSAPR will result in reduced NO<sub>x</sub> and SO<sub>2</sub> emissions from Wisconsin's power plants, which will assist Wisconsin's efforts to attain and maintain the 2012 PM<sub>2.5</sub> NAAQS.

In this rulemaking, EPA is not proposing to approve any new provisions in NR 415 or NR 431 that have not been previously approved by EPA. EPA is also not proposing to approve or disapprove any existing state provisions or rules related to start-up, shutdown or malfunction or director's discretion in the context of section 110(a)(2)(A). EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### *B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System*

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. This review of the annual monitoring plan includes EPA's determination that the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

WDNR continues to operate an extensive air monitoring network, which is used to determine compliance with the NAAQS. Furthermore, WDNR submits yearly monitoring network plans to EPA, and EPA approved WDNR's Annual Air Monitoring Network Plan on October 31, 2014. Monitoring data from WDNR are entered into EPA's AQS in a timely manner, and the state provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### *C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD*

This section requires each state to provide a program for enforcement of control measures. Section 110(a)(2)(C) also includes various requirements relating to PSD.

1. Program for enforcement of control measures.

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

WDNR maintains an enforcement program to ensure compliance with SIP requirements. The Bureau of Air Management houses an active statewide compliance and enforcement team that works in all geographic regions of the state. WDNR refers actions as necessary to the Wisconsin Department of Justice with the involvement of WDNR. Under *Wis. Stats.* 285.13, WDNR has the authority to impose fees and penalties to ensure that required measures are ultimately implemented. *Wis. Stats.* 285.83 and *Wis. Stats.* 285.87 provide WDNR with the authority to enforce violations and assess penalties. EPA proposes that Wisconsin has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### 2. PSD.

Section 110(a)(2)(C) includes various PSD requirements: identification of NO<sub>x</sub> as a precursor to ozone provisions in the PSD program, identification of precursors to PM<sub>2.5</sub> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub><sup>3</sup> condensables in the PSD program, and greenhouse gas (GHG) permitting and the “Tailoring Rule.”<sup>4</sup> In this rulemaking, we are not taking action on the state's satisfaction of the various PSD permitting requirements. Instead, EPA will evaluate Wisconsin's compliance with each of these requirements in a separate rulemaking.

<sup>3</sup> PM<sub>10</sub> refers to particles with an aerodynamic diameter of less than or equal to 10 micrometers.

<sup>4</sup> In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM<sub>2.5</sub> NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (*see* 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012, proposed rulemaking for infrastructure SIPs for the 2006 PM<sub>2.5</sub> NAAQS (*see* 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO<sub>x</sub> as a precursor to ozone, PM<sub>2.5</sub> precursors, PM<sub>2.5</sub> and PM<sub>10</sub> condensables, PM<sub>2.5</sub> increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to have been met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP.

<sup>2</sup> See, e.g., EPA's final rule on “National Ambient Air Quality Standards for Lead.” 73 FR 66964 at 67034.

*D. Section 110(a)(2)(D)—Interstate Transport; Pollution Abatement*

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

1. Interstate transport—significant contribution.

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to transport for the 2012 PM<sub>2.5</sub> NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

2. Interstate transport—interfere with maintenance.

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to interference with maintenance for the 2012 PM<sub>2.5</sub> NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

3. Interstate transport—prevention of significant deterioration.

Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting interference with PSD. In this rulemaking, we are not taking action on the state's satisfaction of PSD requirements. Instead, EPA will evaluate Wisconsin's compliance with PSD requirements in separate rulemakings.

4. Interstate transport—protect visibility.

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2013 Guidance states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

On August 7, 2012, EPA published its final approval of Wisconsin's regional haze plan (*see* 77 FR 46952). Therefore, EPA is proposing that Wisconsin has met the visibility protection requirements of section 110(a)(2)(D)(i)(II) for the 2012 PM<sub>2.5</sub> NAAQS.

5. Interstate and international pollution abatement.

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 of the CAA (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Wisconsin has provisions in the EPA-approved portion of its PSD program requiring new or modified sources to notify neighboring states of potential negative air quality impacts. Wisconsin's submission references these provisions as being adequate to meet the requirements of section 126(a). Wisconsin has no pending obligations under section 115. Therefore, EPA is proposing that Wisconsin has met all applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

*E. Section 110(a)(2)(E)—Adequate Authority and Resources*

This section 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 respecting state boards under section 128.

1. Adequate resources.

Wisconsin's biennial budget ensures that EPA grant funds as well as state funding appropriations are sufficient to administer its air quality management program, and WDNR has routinely demonstrated that it retains adequate personnel to administer its air quality management program. Wisconsin's Environmental Performance Partnership Agreement with EPA documents certain funding and personnel levels at WDNR. As discussed in previous sections, basic duties and authorities in the state are outlined in *Wis. Stats.* 285.11. EPA proposes that Wisconsin has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

2. State board requirements.

Section 110(a)(2)(E) also requires each SIP to 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 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 (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 July 2, 2015, WDNR submitted rules from *Wis. Stats.* for incorporation into the SIP, pursuant to section 128 of the CAA. Wisconsin maintains a state board, called the Wisconsin Natural Resources Board (NRB). However, the NRB's functions are purely regulatory, advisory, and policy-making. Under *Wis. Stats.* 15.05, the administrative powers and duties of the WDNR, including issuance of permits and enforcement orders, are vested in the secretary. Under the statutes that govern its operations, the NRB does not and cannot approve permits or enforcement orders. Therefore, Wisconsin 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 Wisconsin, this power is vested in the Secretary of the WDNR. *Wis. Stats.* 19.45(2) prevents financial gain of any public official, which addresses the issue of deriving any significant portion of income from persons subject to permits and enforcement orders. Additionally, *Wis. Stats.* 19.46 prevents a public official from taking actions where there is a conflict of interest. As a public official under *Wis. Stats.* 19, the Secretary of the WDNR is subject to these ethical obligations. EPA concludes that WDNR's submission as it relates to the state board requirements under section 128 is consistent with applicable CAA requirements. EPA approved these rules on Thursday, January 21, 2016 (81 FR 3334). Therefore, EPA is proposing that Wisconsin has satisfied the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2012 PM<sub>2.5</sub> NAAQS.

*F. Section 110(a)(2)(F)—Stationary Source Monitoring System*

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the

implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

WDNR requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued, to the Bureau of Air Management Compliance Team. The frequency and requirements for report review are incorporated as part of NR 438 and NR 439. Additionally, WDNR routinely submits quality-assured analyses and data obtained from its stationary source monitoring system for review and publication by EPA. Basic authority for Wisconsin's Federally mandated Compliance Assurance Monitoring reporting structure is provided in *Wis. Stats.* 285.65. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### *G. Section 110(a)(2)(G)—Emergency Power*

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. The 2013 Guidance states that infrastructure SIP submissions should specify authority, rested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

*Wis. Stats.* 285.85 requires WDNR to act upon a finding that an emergency episode or condition exists. The language contained in this chapter authorizes WDNR to seek immediate injunctive relief in circumstances of substantial danger to the environment or to public health. EPA proposes that Wisconsin has met the applicable infrastructure SIP requirements for this portion of section 110(a)(2)(G) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### *H. Section 110(a)(2)(H)—Future SIP Revisions*

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for

attaining the NAAQS, or an EPA finding that the SIP is substantially inadequate.

*Wis. Stats.* 285.11(6) provides WDNR with the authority to develop all rules, limits, and regulations necessary to meet the NAAQS as they evolve, and to respond to any EPA findings of inadequacy with the overall Wisconsin SIP and air management programs. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### *I. Section 110(a)(2)(I)—Nonattainment Planning Requirements of Part D*

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

#### *J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notification; PSD; Visibility Protection*

The evaluation of the submission from Wisconsin with respect to the requirements of section 110(a)(2)(J) are described below.

##### *1. Consultation with government officials.*

States must provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements.

*Wis. Stats.* 285.13(5) contains the provisions for WDNR to advise, consult, contract, and cooperate with other agencies of the state and local governments, industries, other states, interstate or inter-local agencies, the Federal government, and interested persons or groups during the entire process of SIP revision development and implementation and for other elements regarding air management for which WDNR is the officially charged agency. WDNR's Bureau of Air Management has effectively used formal stakeholder structures in the development and refinement of all SIP revisions. Additionally, Wisconsin is an active member of the Lake Michigan Air Directors Consortium (LADCO), which provides technical assessments and a forum for discussion regarding air quality issues to member states. EPA proposes that Wisconsin has satisfied the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

##### *2. Public notification.*

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances of the NAAQS. WDNR maintains portions of its Web site specifically for issues related to the 2012 PM<sub>2.5</sub> NAAQS.<sup>5</sup> Information related to monitoring sites is found on Wisconsin's Web site, as is the calendar for all public events and public hearings held in the state. EPA proposes that Wisconsin has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

##### *3. PSD.*

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Wisconsin's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and (a)(2)(D)(i)(II). EPA will evaluate Wisconsin's compliance with the various PSD and GHG infrastructure SIP requirements of section 110(a)(2)(J) in a separate rulemaking.

##### *4. Visibility protection.*

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. However, as EPA discussed in section D, Wisconsin has a fully approved regional haze plan. This plan also meets the visibility requirements of section 110(a)(2)(J). EPA proposes that Wisconsin has satisfied the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### *K. Section 110(a)(2)(K)—Air Quality Modeling/Data*

SIPs must provide for the performance of air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and the submission of such data to EPA upon request.

WDNR maintains the capability to perform computer modeling of the air quality impacts of emissions of all criteria pollutants, including both source-oriented dispersion models and more regionally directed complex photochemical grid models. WDNR

<sup>5</sup> <http://dnr.wi.gov/topic/AirQuality/Particles.html>.

collaborates with LADCO, EPA, and other Lake Michigan states in order to perform modeling. *Wis. Stats.* 285.11, *Wis. Stats.* 285.13, and *Wis. Stats.* 285.60–285.69 authorize WDNR to perform modeling. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### *L. Section 110(a)(2)(L)—Permitting Fees*

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

WDNR implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62951). EPA approved revisions to the program on February 28, 2006 (71 FR 9934). NR 410 contains the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2012 PM<sub>2.5</sub> NAAQS.

#### *M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities*

States must consult with and allow participation from local political subdivisions affected by the SIP.

In addition to the measures outlined in the paragraph addressing WDNR's submittals regarding consultation requirements of section 110(a)(2)(J), as contained in *Wis. Stats.* 285.13(5), the state follows a formal public hearing process in the development and adoption of all SIP revisions that entail new or revised control programs or strategies and targets. For SIP revisions covering more than one source, WDNR is required to provide the standing committees of the state legislature with jurisdiction over environmental matters with a 60-day review period to ensure that local entities have been properly engaged in the development process. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

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

EPA is proposing to approve most elements of the submission from Wisconsin certifying that its current SIP is sufficient to meet the required infrastructure elements under section 110(a)(1) and (2) for the 2012 PM<sub>2.5</sub> NAAQS.

EPA's proposed actions for the state's satisfaction of infrastructure SIP requirements, by element of section

110(a)(2) and NAAQS, are contained in the table below.

Element	2012 PM <sub>2.5</sub>
(A)—Emission limits and other control measures.	A
(B)—Ambient air quality monitoring/data system.	A
(C)1—Program for enforcement of control measures.	A
(C)2—PSD.	NA
(D)1—I Prong 1: Interstate transport—significant contribution.	NA
(D)2—I Prong 2: Interstate transport—interfere with maintenance.	NA
(D)3—II Prong 3: Interstate transport—prevention of significant deterioration.	NA
(D)4—II Prong 4: Interstate transport—protect visibility.	A
(D)5—Interstate and international pollution abatement.	A
(E)1—Adequate resources	A
(E)2—State board requirements.	A
(F)—Stationary source monitoring system.	A
(G)—Emergency power	A
(H)—Future SIP revisions	A
(I)—Nonattainment planning requirements of part D.	NA
(J)1—Consultation with government officials.	A
(J)2—Public notification	A
(J)3—PSD	NA
(J)4—Visibility protection	A
(K)—Air quality modeling/data	A
(L)—Permitting fees	A
(M)—Consultation and participation by affected local entities.	A

In the above table, the key is as follows:

A	Approve
NA	No Action/Separate Rule-making.

#### **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);

- 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 (Pub. L. 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 3, 2016.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

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