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[FR Doc. 2012-14419 Filed 6-14-12; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R04-OAR-2010-0969; FRL-9686-9]

**Approval and Promulgation of Implementation Plans; Revisions to the Georgia State Implementation Plan****AGENCY:** Environmental Protection Agency.**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia, through the Department of Natural Resources (GA DNR), on November 16, 2010. This revision consists of transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. The intended effect is to update the transportation conformity criteria and procedures in the Georgia SIP. This action is being taken pursuant to section 110 of the Clean Air Act.

**DATES:** This direct final rule is effective August 14, 2012 without further notice, unless EPA receives adverse comment by July 16, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2010-0969, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *Email*: [somerville.amanetta@epa.gov](mailto:somerville.amanetta@epa.gov).

3. *Fax*: (404) 562-9019.

4. *Mail*: "EPA-R04-OAR-2010-0969," Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Amanetta Somerville, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW.,

Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**Instructions:** Direct your comments to Docket ID No. "EPA-R04-OAR-2010-0969." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 electronically in *www.regulations.gov* or in hard copy at the Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Amanetta Somerville, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Ms. Somerville's telephone number is 404-562-9025. She can also be reached via electronic mail at [somerville.amanetta@epa.gov](mailto:somerville.amanetta@epa.gov).

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**I. Transportation Conformity**

Transportation conformity (hereafter referred to as "conformity") is required under section 176(c) of the Clean Air Act (CAA or Act) to ensure that federally supported highway, transit projects, and other activities are consistent with ("conform to") the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Act, for the following transportation related criteria pollutants: Ozone, particulate matter (e.g., PM<sub>2.5</sub> and PM<sub>10</sub>), carbon monoxide, and nitrogen dioxide.

Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant criteria pollutants, also known as national ambient air quality standards (NAAQS). The transportation conformity regulation is found in 40 CFR part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

## II. Background for This Action

### A. Federal Requirements

EPA promulgated the Federal transportation conformity criteria and procedures ("Conformity Rule") on November 24, 1993 (58 FR 62188). Among other things, the rule required states to address all provisions of the conformity rule in their SIPs frequently referred to as "conformity SIPs." Under 40 CFR 51.390, most sections of the conformity rule were required to be copied verbatim. States were also required to tailor all or portions of the following three sections of the conformity rule to meet their state's individual circumstances: 40 CFR 93.105, which addresses consultation procedures; 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in a metropolitan planning organization's (MPO's) transportation plan and transportation improvement program that must be obtained prior to a conformity determination, and the requirement that such commitments, when they exist, must be fulfilled; and 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments, when they exist.

On August 10, 2005, the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) was signed into law. SAFETEA-LU revised section 176(c) of the CAA transportation conformity provisions. One of the changes streamlines the requirements for conformity SIPs. Under SAFETEA-LU, states are required to address and tailor only three sections of the rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and, 40 CFR 93.125(c), described above. In general, states are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule. These changes took effect on August 10, 2005, when SAFETEA-LU was signed into law.

### B. Atlanta Conformity SIP

Effective June 15, 2004, EPA designated 20 whole counties in the Atlanta area, as nonattainment for the 1997 8-hour ozone standard. The counties include Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton counties. Effective April 5, 2005, EPA designated 20 whole

counties, and a portion of two counties in the Atlanta area, as nonattainment for the 1997 Annual PM<sub>2.5</sub> standard. The whole counties include Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton counties; the partial counties include Heard and Putnam counties. The current designation status of both the Atlanta 1997 8-hour ozone and 1997 Annual PM<sub>2.5</sub> areas is nonattainment.

There are two MPOs that are responsible for transportation planning for areas within the Atlanta nonattainment areas. The Atlanta Regional Commission (ARC) is the MPO for most of the Atlanta 1997 8-hour ozone and 1997 Annual PM<sub>2.5</sub> nonattainment areas. ARC's planning boundary includes the whole counties of Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding and Rockdale counties; and portions of Barrow, Bartow, Newton, Spalding and Walton counties in the Atlanta, Georgia area. Gainesville-Hall MPO (GHMPO) is the other MPO for the Atlanta 1997 8-hour ozone and 1997 Annual PM<sub>2.5</sub> nonattainment areas. GHMPO's planning boundary includes Hall County. Walton County and the portions of Barrow, Bartow, Heard, Newton, Putnam, Spalding counties are considered "donut"<sup>1</sup> areas for the purposes of implementing transportation conformity in this area. Per the Transportation Conformity Rule, the MPO's conformity determination is not complete without a regional analysis that considers the projects in the MPO area(s) as well as the donut areas that are within the nonattainment/maintenance area. For the purposes of implementing 1997 8-hour ozone and 1997 Annual PM<sub>2.5</sub> conformity, ARC serves as the lead agency for the preparation, consultation, and distribution of the conformity determinations.

Previously Georgia had established transportation conformity SIP for the Atlanta area. On September 27, 2002, EPA approved the Atlanta area's SIP revision which incorporated by reference 40 CFR 93 Subpart A, 67 FR 60869, and customized 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c) for all of the MPOs in the entire state. Specifically, the Atlanta area established a Memorandum of

Agreement (MOA) for implementing the conformity Criteria and Consultation Procedure. The new conformity SIP (the subject of this rule making) has removed any incorporation by reference and has converted the MOA to a State Rule to be consistent with the SAFETEA-LU revisions to the CAA (Pub. L. 109-59) and subsequent regulations published on January 24, 2008 (73 FR 4420).

### C. Chattanooga Conformity SIP

Effective April 5, 2005, EPA designated Hamilton County in Tennessee, Walker and Catoosa Counties in Georgia, and a portion of Jackson County, Alabama in the tri-state Chattanooga area, as nonattainment for the 1997 Annual PM<sub>2.5</sub> standard. The current designation status of the Chattanooga 1997 Annual PM<sub>2.5</sub> area is nonattainment.

The Chattanooga-Hamilton County, North Georgia Transportation Planning Organization (CHNGTPO) is the MPO for most of the tri-state Chattanooga, TN-GA, 1997 Annual PM<sub>2.5</sub> area. CHNGTPO's planning boundary includes Portions of Walker and Catoosa Counties in Georgia and Hamilton County in Tennessee; Portions of Walker and Catoosa Counties in Georgia; and a portion of Jackson County, Alabama. The portion of Jackson County, Alabama that is within the Chattanooga 1997 Annual PM<sub>2.5</sub> area is not within the CHNGTPO planning boundary and thus is considered a "donut" area for the purposes of implementing transportation conformity in this area. Per the Transportation Conformity Rule, the MPO's conformity determination is not complete without a regional analysis that considers the projects in the MPO area as well as the donut areas that are within the nonattainment/maintenance area. For the purposes of implementing 1997 Annual PM<sub>2.5</sub> conformity, CHNGTPO serves as the lead agency for the preparation, consultation, and distribution of the conformity determinations.

Walker and Catoosa Counties in Georgia which are a part of the Chattanooga area do not have a previous conformity SIP. The states of Tennessee and Alabama will establish conformity procedures for the counties that make up the Tennessee and Alabama portion of the Chattanooga nonattainment area in their individual conformity SIPs. The SIP revision at issue now includes the conformity procedures for Walker and Catoosa Counties as part of the 1997 Annual PM<sub>2.5</sub> Chattanooga nonattainment area.

<sup>1</sup> Donut areas are geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area.

#### *D. Macon Conformity SIP*

Effective June 15, 2004, EPA designated Bibb County and a portion of Monroe County in the Macon, Georgia area as nonattainment for the 1997 8-hour ozone standard. Effective April 5, 2005, EPA designated Bibb County and a portion of Monroe County in the Macon, Georgia area as nonattainment for the 1997 Annual PM<sub>2.5</sub> standard. The current designation status of the Macon 1997 8-hour ozone and 1997 Annual PM<sub>2.5</sub> areas are nonattainment for PM<sub>2.5</sub> and attainment (with a maintenance plan) for 1997 8-hour ozone (72 FR 53432, September 19, 2007).

The Macon Area Transportation Study (MATS) is the MPO for most of the Macon 1997 8-hour ozone and 1997 Annual PM<sub>2.5</sub> nonattainment area. The MATS planning boundary includes all of Bibb County. The portion of Monroe County that is included in the Macon 1997 8-hour ozone and 1997 Annual PM<sub>2.5</sub> nonattainment areas is not within the MATS planning boundary, and thus is considered a “donut” area for the purposes of implementing transportation conformity in this area. The donut area of Monroe County entered into an agreement with the Georgia Department of Transportation (DOT) that will allow the Georgia DOT to represent them. Per the transportation conformity regulations, the MPO’s conformity determination is not complete without a regional analysis that considers the transportation projects in the MPO area as well as the donut areas that are within the nonattainment area. For the purposes of implementing 1997 8-hour ozone and 1997 Annual PM<sub>2.5</sub> conformity, MATS serves as the lead agency for the preparation, consultation and distribution of the conformity determination.

Bibb County and the portion of Monroe County, Georgia which are a part of the Macon area do not have a previous conformity SIP. The SIP revision at issue now includes the conformity procedures for both the entire county of Bibb and the portion of Monroe County, Georgia, for the Macon area.

#### *E. Rome Conformity SIP*

Effective April 5, 2005, EPA designated a portion of Floyd County in the Rome-Floyd area as nonattainment for the 1997 Annual PM<sub>2.5</sub> standard. The current designation status of the Rome-Floyd County 1997 Annual PM<sub>2.5</sub> area is nonattainment. The Rome Floyd County MPO (RFCMPO) is the MPO for the entire Rome-Floyd 1997 Annual PM<sub>2.5</sub> area. For the purposes of implementing

1997 Annual PM<sub>2.5</sub> conformity, RFCMPO serves as the lead agency for the preparation, consultation, and distribution of the conformity determinations.

Floyd County, Georgia which is a part of the Rome area does not have a previous conformity SIP. The SIP revision at issue now includes the conformity procedures for the entire county of Floyd county, Georgia, for the Rome area.

### **III. State Submittal and EPA Evaluation**

On November 16, 2010, the State of Georgia, through GA DNR, submitted the State’s transportation conformity and consultation interagency rule to EPA as a revision to the SIP. On February 21, 2011, and again on March 10, 2011, GA DNR submitted supplemental information regarding the Georgia transportation conformity rule. These three SIP revisions established procedures for interagency consultation and replaced the Memorandum of Agreement submitted by GA DNR and approved by EPA on September 27, 2002 (67 FR 60869).

The State of Georgia developed its consultation rule based on the elements contained in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c). As a first step, the State worked with the existing transportation planning organization’s interagency committee that included representatives from the State air quality agency, State DOT, Federal Highway Administration—Georgia Division, Federal Transit Administration, the MPOs of the maintenance and nonattainment areas of Georgia, and EPA. The interagency committee met regularly and drafted the consultation rules considering elements in 40 CFR Part 93.105, 93.122(a)(4)(ii), and 93.125(c), and integrated the local procedures and processes into the rule. The consultation process developed in this rule is for the State of Georgia. On July 6, 2010, GA DNR held a public hearing for the transportation conformity rulemaking.

EPA has evaluated this SIP and has determined that the State has met the requirements of Federal transportation conformity rule as described in 40 CFR Part 51, Subpart T and 40 CFR Part 93, Subpart A. GA DNR has satisfied the public participation and comprehensive interagency consultation requirement during development and adoption of the State Rule at the local level. Therefore, EPA is approving the rule as a revision to the Georgia SIP. EPA’s rule requires the states to develop their own processes and procedures for interagency consultation among the federal, state, and local agencies and

resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and U.S. DOT in consulting with the state and local air quality agencies and EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and U.S. DOT.

EPA has reviewed the submittal to assure consistency with the CAA as amended by SAFETEA-LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and has concluded that the submittal is approvable. Details of EPA’s review are set forth in a technical support document (TSD), which has been included in the docket for this action. Specifically, in the TSD, EPA identifies how the submitted procedures satisfy our requirements under 40 CFR 93.105 for interagency consultation with respect to the development of transportation plans and programs, SIPs, and conformity determinations, the resolution of conflicts, and the provision of adequate public consultation, and our requirements under 40 CFR 93.122(a)(4)(ii) and 93.125(c) for enforceability of control measures and mitigation measures.

### **IV. Public Comment and Final Action**

For the reasons set forth above, EPA is taking action under section 110 of the Act to approve the rule implementing the conformity criteria and consultation procedures revision to the Georgia SIP pursuant to the CAA, as a revision to the Georgia SIP. As a result of this action, Georgia’s previously SIP-approved conformity procedures for Georgia (67 FR 60869, September 27, 2002), will be replaced by the procedures submitted to EPA on November 16, 2010, for approval and adopted by State of Georgia on August 25, 2010. This action also establishes consultation procedures for all counties in Georgia.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 14, 2012 without further notice unless the

Agency receives adverse comments by July 16, 2012.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 14, 2012 and no further action will be taken on the proposed rule.

## 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 Act 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 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 rule 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.

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 August 14, 2012. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 1, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

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

## Subpart L—Georgia

- 2. Section 52.570 is amended:

- a. In paragraph (c) by adding a new entry in numerical order for "391-3-1-.15";
- b. In paragraph (e) by removing and reserving entry 12 to read as follows:

## § 52.570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

## EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* 391-3-1-.15 .....	* Georgia Transportation Conformity and Consultation Inter-agency Rule.	* 10/6/10	* 6/15/2012 [Insert citation of publication].	* 

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## EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP Provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date
12. [Reserved].			

[FR Doc. 2012-14595 Filed 6-14-12; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2007-1179; FRL-9685-7]

### Approval of Air Quality Implementation Plans; Wisconsin; Partial Disapproval of "Infrastructure" State Implementation Plan

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to its authority under the Clean Air Act (CAA), EPA is taking final action to disapprove two narrow portions of submissions made by the Wisconsin Department of Natural Resources (WDNR) to address the section 110(a)(1) and (2) requirements of the CAA, often referred to as the "infrastructure" State Implementation Plan (SIP). Specifically, we are finalizing the disapproval of portions of WDNR's submissions intended to meet certain requirements of section 110(a)(2)(C) with respect to the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) and 1997 24-hour PM<sub>2.5</sub> NAAQS. Among other conditions, section 110(a)(2)(C) of the CAA requires states to correctly address oxides of nitrogen (NO<sub>x</sub>) as a precursor to ozone in their respective prevention of significant deterioration (PSD) programs. EPA is finalizing disapproval of a portion of Wisconsin's submissions intended to satisfy this requirement. EPA is also finalizing disapproval of a portion of Wisconsin's submissions because the SIP currently contains a new source review (NSR) exemption for fuel changes as major modifications where the source was capable of accommodating the change before January 6, 1975. The proposed rule associated with this final action was published on April 20, 2012.

**DATES:** This final rule is effective on July 16, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2007-1179. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. 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 Andy Chang at (312) 886-0258 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0258, [chang.andy@epa.gov](mailto:chang.andy@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 for this action?
- II. What is our response to comments received on the proposed rulemaking?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

#### I. What is the background for this action?

Under sections 110(a)(1) and (2) of the CAA, and implementing EPA guidance, states were required to submit either revisions to their existing EPA approved SIPs necessary to provide for implementation, maintenance, and

enforcement of the 1997 ozone NAAQS and the 1997 PM<sub>2.5</sub> NAAQS, or certifications that their existing SIPs for ozone and particulate matter already met those basic requirements. The statute requires that states make these submissions within 3 years after the promulgation of new or revised NAAQS. However, intervening litigation over the 1997 ozone NAAQS and the 1997 PM<sub>2.5</sub> NAAQS created uncertainty about how states were to proceed.<sup>1</sup> Accordingly, both EPA and the states were delayed in addressing these basic SIP requirements.

In a consent decree with Earth Justice, EPA agreed to make completeness findings with respect to these SIP submissions. Pursuant to this consent decree, EPA published completeness findings for all states for the 1997 8-hour ozone NAAQS on March 27, 2008, and for all states for the 1997 PM<sub>2.5</sub> NAAQS on October 22, 2008.

On October 2, 2007, EPA issued 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> National Ambient Air Quality Standards," making recommendations to states concerning these SIP submissions (the 2007 Guidance). Within the 2007 Guidance, EPA gave general guidance relevant to matters such as the timing and content of the submissions. Wisconsin made its infrastructure SIP submission for the 1997 ozone and PM<sub>2.5</sub> NAAQS on December 12, 2007. The State provided supplemental submissions to EPA on January 24, 2011, and March 28, 2011.

On April 28, 2011, EPA published its proposed action on the Region 5 states' submissions (*see* 76 FR 23757). Notably, we proposed to find that Wisconsin had met the requirements of section 110(a)(2)(C) concerning state PSD programs generally, and in particular the requirement to include NO<sub>x</sub> as a precursor to ozone (*see* 76 FR 23757 at 23760-23761), thereby satisfying the

<sup>1</sup> See, e.g., *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457 (2001).