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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2013-0072; FRL-9913-62-OAR]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Section 110(9)(2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving two State Implementation Plan (SIP) revisions submitted by the State of Maryland pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The State of Maryland has made submittals addressing the infrastructure requirements for the 2008 lead (Pb) NAAQS.

**DATES:** This final rule is effective on August 15, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2013-0072. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, 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 electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Ruth Knapp, (215) 814-2191, or by email at [knapp.ruth@epa.gov](mailto:knapp.ruth@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On October 15, 2008, EPA substantially strengthened the primary and secondary lead NAAQS (hereafter the 2008 Pb NAAQS), revising the level of the primary (health-based) standard from 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 0.15  $\mu\text{g}/\text{m}^3$ , measured as total suspended particles (TSP) and not to be exceeded with an averaging time of a rolling three month period. EPA also revised the secondary (welfare-based) standard to be identical to the primary standard, as well as the associated ambient air monitoring requirements. See 40 CFR 50.16.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS or within such shorter period as EPA may prescribe. The contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(1) provides the procedural and timing requirements for SIPs and section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. More specifically, section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS.

For the 2008 Pb NAAQS, states typically have met many of the basic program elements required in section 110(a)(2) of the CAA through earlier SIP submissions in connection with

previous lead NAAQS. Nevertheless, pursuant to section 110(a)(1) of the CAA, states have to review and revise, as appropriate, their existing lead NAAQS SIPs to ensure that the SIPs are adequate to address the 2008 Pb NAAQS. To assist states in meeting this statutory requirement, EPA issued guidance on October 14, 2011, entitled, "Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)," which lists the basic elements that states should include in their SIPs for the 2008 Pb NAAQS.

##### II. Summary of SIP Revision

On May 2, 2014 (79 FR 25059), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland proposing approval of Maryland's January 3, 2013 and August 14, 2013 submittals to satisfy several requirements of section 110(a)(2) of the CAA for the 2008 Pb NAAQS. In the NPR, EPA proposed approval of the following infrastructure elements: Sections 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. This action does not include any action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process if necessary. The rationale which supports EPA's proposed action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available online at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2013-0072. No comments were received on this rulemaking action.

##### III. Final Action

EPA is approving two revisions to the Maryland SIP, Maryland's January 3, 2013 and August 14, 2013 submittals for the 2008 Pb NAAQS, that address the following infrastructure elements: Sections 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). This rulemaking action does not include section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the three year submission deadline of section 110(a)(1), and will be addressed in a separate process.

#### IV. Statutory and Executive Order Reviews

##### A. General Requirements

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 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.

##### B. Submission to Congress and the Comptroller General

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).

##### C. Petitions for Judicial Review

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 September 15, 2014. 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, addressing infrastructure requirements of section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA for the 2008 Pb NAAQS for the State of Maryland, 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, Lead, Reporting and recordkeeping requirements.

Dated: June 27, 2014.

W.C. Early,

Acting, Regional Administrator, Region III.

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.*

##### Subpart V—Maryland

- 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for "Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS" at the end of the table to read as follows:

##### § 52.1070 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

| Name of non-regulatory SIP revision                                    | Applicable geographic area | State submittal date  | EPA Approval date  | Additional explanation   |
|--|----------------------------|-----------------------|--|--|
| * * *  | * * *                      | * * *                 | * * *  | * * *  |
| Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS. | Statewide                  | 1/3/2013<br>8/14/2013 | 7/16/2014<br>[Insert page number where the document begins]. | This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L) and (M) |

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA-R05-OAR-2011-0888; FRL-9913-59-Region 5]****Approval and Promulgation of Air Quality Implementation Plans; Illinois, Michigan, Minnesota, Wisconsin; Infrastructure SIP Requirements for the 2008 Lead NAAQS****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve elements of state implementation plan (SIP) submissions from Michigan and Wisconsin while taking final action to approve some elements and disapprove other elements of SIP submissions from Illinois and Minnesota regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 lead National Ambient Air Quality Standards (2008 Pb 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. Illinois and Minnesota already administer federally promulgated regulations that address the final disapprovals described in today's rulemaking. Therefore, these two states are not obligated to submit new or additional regulations to EPA.

**DATES:** This final rule is effective on August 15, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2011-0888. 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:** The proposed rulemaking associated with this final action was published on May 13, 2014, and EPA received two comment letters during the comment period, which ended on June 12, 2014. One of the letters supported EPA's proposed actions, and the concerns raised in the other letter, as well as EPA's response, will be addressed in this final action.

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 these SIP submissions?
  - A. What state SIP submissions does this rulemaking address?
  - B. Why did the states make these SIP submissions?
  - C. What is the scope of this rulemaking?
- 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 of these SIP submissions?***A. What state SIP submissions does this rulemaking address?*

This rulemaking addresses submissions from the following states in EPA Region 5: Illinois Environmental Protection Agency (Illinois EPA); Michigan Department of Environmental Quality (MDEQ); Minnesota Pollution Control Agency (MPCA); and Wisconsin Department of Natural Resources (WDNR). The states submitted their 2008 Pb NAAQS infrastructure SIPs on the following dates: Illinois—December 31, 2012; Michigan—April 3, 2012, and supplemented on August 9, 2013, and September 19, 2013; Minnesota—June 19, 2012; and, Wisconsin—July 26, 2012.

*B. Why did the states make these SIP submissions?*

Under sections 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 2008 Pb NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their

existing SIPs for Pb and ozone 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 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 PM<sub>2.5</sub><sup>1</sup> NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)" (2009 Memo), followed by the October 14, 2011, "Guidance on infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)" (2011 Memo). Most recently, EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2), and primarily address the 2008 Pb NAAQS. To the extent that the prevention of significant deterioration (PSD) program is comprehensive and non-NAAQS specific, a narrow evaluation of other NAAQS, such as the 1997 ozone and 2006 PM<sub>2.5</sub> NAAQS will be included in the appropriate sections.

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

EPA is acting upon the SIP submissions from Illinois, Michigan, Minnesota, and Wisconsin that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to 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

<sup>1</sup> PM<sub>2.5</sub> refers to particulate matter of 2.5 microns or less in diameter, oftentimes referred to as "fine" particles.