

Members and Their Dependents.” Subsequent to the publication of the proposed rule in the **Federal Register**, DoD discovered that an identical proposed rule published in the **Federal Register** on Friday, June 7, 2013 (78 FR 34292–34293). DoD is hereby withdrawing the proposed rule that published in the **Federal Register** on Thursday, August 8, 2013.

**DATES:** As of August 19, 2013 the proposed rule published August 8, 2013 (78 FR 48366–48367), is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Patricia Toppings, 571–372–0485.

Dated: August 14, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2011–0888; EPA–R05–OAR–2011–0969; EPA–R05–OAR–2012–0567; EPA–R05–OAR–2012–0988; FRL–9900–19–Region 5]

#### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Infrastructure SIP Requirements for the 2008 Lead and Ozone National Ambient Air Quality Standards; Indiana PSD; Indiana State Board Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve elements of state implementation plan (SIP) submissions by Indiana regarding the infrastructure requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 lead and 2008 8-hour ground level ozone national ambient air quality standards (2008 Pb and ozone 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. EPA is also proposing to approve portions of submissions from Indiana addressing EPA’s requirements for the prevention of significant deterioration (PSD) program. Lastly, EPA is proposing to approve a submission from Indiana addressing the state board requirements under section 128 of the CAA.

**DATES:** Comments must be received on or before September 18, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0888 (2008 Pb infrastructure SIP elements), EPA–R05–OAR–2011–0969 (2008 ozone infrastructure SIP elements), EPA–R05–OAR–2012–0567 (PSD elements), or EPA–R05–OAR–2012–0988 (state board requirements), by one of the following methods:

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

2. *Email*: [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

3. *Fax*: (312) 408–2279.

4. *Mail*: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID. EPA–R05–OAR–2011–0888 (2008 Pb infrastructure SIP elements), EPA–R05–OAR–2011–0969 (2008 ozone infrastructure SIP elements), EPA–R05–OAR–2012–0567 (PSD elements), or EPA–R05–OAR–2012–0988 (state board requirements). 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI 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* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Protection 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, Environmental Engineer, 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 should I consider as I prepare my comments for EPA?
- II. What is the background of these SIP submissions?
  - A. What state SIP submissions does this rulemaking address?
  - B. Why did the state make these SIP submissions?
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- IV. What is the result of EPA’s review of these SIP submissions?
  - A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures
  - B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System
  - C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD
  - D. Section 110(a)(2)(D)—Interstate Transport
  - E. Section 110(a)(2)(E)—Adequate Resources
  - F. Section 110(a)(2)(F)—Stationary Source Monitoring System

- G. Section 110(a)(2)(G)—Emergency Powers
- H. Section 110(a)(2)(H)—Future SIP Revisions
- I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D
- J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection
- K. Section 110(a)(2)(K)—Air Quality Modeling/Data
- L. Section 110(a)(2)(L)—Permitting Fees
- M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities
- V. What action is EPA taking?
- VI. Statutory and Executive Order Reviews

### **I. What should I consider as I prepare my comments for EPA?**

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

### **II. What is the background of these SIP submissions?**

#### *A. What state SIP submissions does this rulemaking address?*

This rulemaking addresses the following: A December 12, 2011, submission from the State of Indiana intended to meet the applicable infrastructure SIP requirements for the 2008 Pb and ozone NAAQS; a July 12, 2012, submission that was supplemented on December 12, 2012, to address various EPA requirements for its PSD program for incorporation into its PSD SIP; and, a November 29, 2012, submission that was supplemented on December 12, 2012, and May 22, 2013, to address the state board requirements under section 128 for incorporation into the SIP. The Indiana Department of

Environmental Management (IDEM) has requested that EPA approve these revisions with respect to PSD, as well as the state board requirements of section 128, as satisfying any applicable infrastructure SIP requirements for the 2008 Pb and ozone NAAQS.

#### *B. Why did the state 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 and ozone 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> 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). The most recent infrastructure SIP guidance document to date is entitled, “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) and was issued on October 14, 2011. Indiana’s SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2), and primarily address the 2008 Pb and ozone NAAQS. To the extent that the PSD program is comprehensive and non-NAAQS specific, a narrow evaluation of other NAAQS, such as the 1997 8-hour ozone and 2006 PM<sub>2.5</sub> NAAQS, will be included in the appropriate sections.

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

This rulemaking will not cover four substantive areas that are not integral to acting on a state’s infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA’s policies addressing such excess emissions (“SSM”); (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 process or without requiring further approval by EPA, that may be contrary to the CAA (“director’s discretion”); (iii) existing provisions for minor source new source review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA’s regulations that pertain to such programs; and, (iv) 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 of these four areas in separate rulemakings. A detailed rationale can be found in EPA’s July 13, 2011, final rule entitled, “Infrastructure SIP Requirements for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” in the section entitled, “What is the scope of this final rulemaking?” (see 76 FR 41075 at 41076–41079).

In addition, EPA is not acting on portions of section 110(a)(2)(D)(i)—Interstate transport and section 110(a)(2)(J)—Consultation with government officials, public notifications, PSD, and visibility protection. EPA is also not acting on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. The rationale for not acting on elements of these requirements is discussed below.

### **III. What guidance is EPA using to evaluate these SIP submissions?**

EPA’s guidance for these infrastructure SIP submissions is embodied in the 2007 Memo. Specifically, attachment A of this memorandum (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. The 2009 Memo was issued to provide additional guidance for certain elements to meet the requirements of section 110(a)(1) and (2) of the CAA, and the 2011 Memo provides guidance specific to the 2008 Pb NAAQS.

### **IV. What is the result of EPA’s review of these SIP submissions?**

As noted in the 2011 Memo, pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. Indiana provided the opportunity for public comment between October 28, 2011, and December 9, 2011. Additionally, IDEM provided an opportunity for a public

hearing. No comments were received during the comment period, and a public hearing was not requested. EPA is also soliciting comment on our evaluation of IDEM's infrastructure SIP submission in this notice of proposed rulemaking. Indiana provided a detailed synopsis of how various components of its SIP meets each of the requirements in section 110(a)(2) for the 2008 Pb and ozone NAAQS, as applicable. The following review evaluates Indiana's submissions.

#### 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, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.<sup>1</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.

IDEM's authority to adopt emissions standards and compliance schedules is found at Indiana Code (IC) 13-14-8, IC 13-17-3-4, IC 13-17-3-11, and IC 13-17-3-14. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 Pb and ozone NAAQS.

As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

#### 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.

IDEM continues to operate an air monitoring network; EPA approved the state's 2013 Annual Air Monitoring Network Plan on October 31, 2012, including the plan for Pb and ozone. IDEM enters air monitoring data into AQS, and the state provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2008 Pb and ozone NAAQS.

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

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 NSR requirements under the 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.

The evaluation of Indiana's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers: (i) Enforcement of SIP measures; (ii) PSD program for the 2008 Pb and ozone NAAQS including provisions that explicitly identify oxides of nitrogen (NO<sub>x</sub>) as a precursor to ozone in the PSD program; (iii) identification of precursors to PM<sub>2.5</sub> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub><sup>2</sup> condensables in the PSD program; (iv) PM<sub>2.5</sub> increments in the PSD program; and, (v) greenhouse gas (GHG) permitting and the "Tailoring Rule."<sup>3</sup>

<sup>2</sup> PM<sub>10</sub> refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as "coarse" particles.

<sup>3</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 Pb, 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 be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including both the 2008 Pb and ozone NAAQS.

Sub-Element 1: Enforcement of SIP measures

IDEM maintains an enforcement program to ensure compliance with SIP requirements. IC 13-14-1-12 provides the Commissioner with the authority to enforce rules "consistent with the purpose of the air pollution control laws." Additionally, IC 13-14-2-7 and IC 13-17-3-3 provide the Commissioner with the authority to assess civil penalties and obtain compliance with any applicable rule a board has adopted in order to enforce air pollution control laws. Lastly, IC 13-14-10-2 allows for an emergency restraining order that prevents any person from causing, or introducing contaminants, that cause or contribute to air pollution. EPA proposes that Indiana has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2008 Pb and ozone NAAQS.

Sub-Element 2: PSD Program for the 2008 Pb and Ozone NAAQS

Pursuant to the 2011 Memo, a state should demonstrate that it is authorized to implement its PSD permit program to ensure that the construction of major stationary sources does not cause or contribute to a violation of the 2008 Pb NAAQS. Indiana's EPA-approved SIP rules, contained at 326 Indiana Administrative Code (IAC) 2-2, contain provisions that adequately address the applicable infrastructure SIP requirements related to the 2008 Pb NAAQS.

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 8, 2005 (*see* 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO<sub>x</sub> as a precursor to ozone (70 FR 71612 at 71679, 71699-71700). This requirement was codified in 40 CFR 51.166, and consisted of the following:<sup>4</sup>

40 CFR 51.166(b)(1)(ii): A major source that is major for volatile organic compounds or NO<sub>x</sub> shall be considered major for ozone;

40 CFR 51.166 (b)(2)(ii): Any significant emissions increase (as defined at paragraph (b)(39) of this

<sup>1</sup> *See, e.g.*, EPA's 73 FR 66964 at 67034, final rule on "National Ambient Air Quality Standards for Lead."

<sup>4</sup> Similar changes were codified in 40 CFR 52.21.

section) from any emissions units or net emissions increase (as defined in paragraph (b)(3) of this section) at a major stationary source that is significant for volatile organic compounds or NO<sub>x</sub> shall be considered significant for ozone;

40 CFR 51.166(b)(23)(i): Ozone: 40 tons per year (tpy) of volatile organic compounds or nitrogen oxides;

40 CFR 51.166(b)(49)(i):<sup>5</sup> Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., volatile organic compounds and NO<sub>x</sub>) are precursors for ozone; and

40 CFR 51.166(i)(5)(i)(e) footnote 1: No *de minimis* air quality level is provided for ozone. However, any net emissions increase of 100 tpy or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of air quality data.

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including these specific NO<sub>x</sub> as a precursor to ozone provisions, by June 15, 2007 (see 70 FR 71612 at 71683). EPA approved revisions to Indiana's PSD SIP reflecting these requirements on October 29, 2012 (see 77 FR 65478).

EPA proposes that Indiana has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2008 Pb and ozone NAAQS.

**Sub-Element 3: Identification of Precursors to PM<sub>2.5</sub> and the Identification of PM<sub>2.5</sub> and PM<sub>10</sub> Condensables in the PSD Program**

On May 16, 2008 (see 73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPS to address sources that emit direct PM<sub>2.5</sub> and other pollutants that contribute to secondary PM<sub>2.5</sub> formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM<sub>2.5</sub>, otherwise

<sup>5</sup>Note that this section of 40 CFR 51.166 has been amended as a result of EPA's Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>); the regulatory text as listed was current as of the issuance of the Phase 2 Rule. The current citation for the VOCs and NO<sub>x</sub> as precursors for ozone are contained in 40 CFR 51.166(b)(49)(i)(b)(i).

known as precursors. In the 2008 rule, EPA identified precursors to PM<sub>2.5</sub> for the PSD program to be sulfur dioxide (SO<sub>2</sub>) and NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The 2008 NSR Rule also specifies that volatile organic compounds (VOCs) are not considered to be precursors to PM<sub>2.5</sub> in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM<sub>2.5</sub> concentrations.

The explicit references to SO<sub>2</sub>, NO<sub>x</sub>, and VOCs as they pertain to secondary PM<sub>2.5</sub> formation are codified at 40 CFR 51.166(b)(49)(i)(b) and 40 CFR 52.21(b)(50)(i)(b). As part of identifying pollutants that are precursors to PM<sub>2.5</sub>, the 2008 NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define "significant" for PM<sub>2.5</sub> to mean the following emissions rates: 10 tpy of direct PM<sub>2.5</sub>; 40 tpy of SO<sub>2</sub>; and 40 tpy of NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (see 73 FR 28321 at 28341).<sup>6</sup>

<sup>6</sup>EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM<sub>10</sub> nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council v. EPA*, No. 08–1250). As the subpart 4 provisions apply only to nonattainment areas, the EPA does not consider the portions of the 2008 rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, the EPA's approval of Indiana's infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion. The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM<sub>2.5</sub> and PM<sub>10</sub> emission limits in NSR permits. Instead, EPA determined that states had to account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables for applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were required be submitted to EPA by May 16, 2011 (see 73 FR 28321 at 28341).

EPA approved revisions to Indiana's PSD SIP reflecting these requirements on October 29, 2012 (see 77 FR 65478), and therefore proposes that Indiana has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2008 Pb and ozone NAAQS.

**Sub-Element 4: PM<sub>2.5</sub> Increments in the PSD Program**

On October 20, 2010, EPA issued the final rule on the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (2010 NSR Rule). This rule established several components for making PSD permitting determinations for PM<sub>2.5</sub>, including a system of "increments" which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

**TABLE 1—PM<sub>2.5</sub> INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER CUBIC METER**

	Annual arithmetic	24-hour max
Class I .....	1	2
Class II .....	4	9
Class III .....	8	18

The 2010 NSR Rule also established a new "major source baseline date" for PM<sub>2.5</sub> as October 20, 2010, and a new trigger date for PM<sub>2.5</sub> as October 20, 2011. These revisions are codified in 40

typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 40 CFR 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR Rule revised the definition of “baseline area” to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM<sub>2.5</sub>. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

On July 12, 2012, and supplemented on December 12, 2012, IDEM submitted revisions intended to address the increments established by the 2010 NSR Rule for incorporation into the SIP, as well as the revised major source baseline date, trigger date, and baseline area level of significance for PM<sub>2.5</sub>. IDEM also requested that these revisions satisfy any applicable infrastructure SIP requirements related to PSD. Specifically, revisions to 326 IAC 2–2–6(b) contain the Federal increments for PM<sub>2.5</sub>, 326 IAC 2–2–1(ee)(3) contains the new major source baseline date for PM<sub>2.5</sub> of October 20, 2010, 326 IAC 2–2–1(gg)(1)(C) contains the new trigger date for PM<sub>2.5</sub> of October 20, 2011, and 326 IAC 2–2–1(f)(1) contains the new baseline area level of significance for PM<sub>2.5</sub>. It should be noted that Indiana’s submitted revisions explicitly include only the PM<sub>2.5</sub> increments as they apply to Class II areas, and not the PM<sub>2.5</sub> increments as they apply to Class I or Class III areas. However, Indiana’s requested revisions specify that if areas in the state are one day classified as Class I or III, the PSD increments pursuant to 40 CFR 52.21 would be adhered to. Because the state’s requested revisions are substantively identical to Federal regulations, EPA therefore proposes to approve 326 IAC 2–2–6(b) into the SIP, and also proposes that Indiana has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2008 Pb and ozone NAAQS. In the event that areas in Indiana are one day designated as Class I or Class III, EPA expects IDEM to adopt the Federally promulgated increments pursuant to 40 CFR 52.21, and submit them for incorporation into the SIP.

#### Sub-Element 5: GHG Permitting and the “Tailoring Rule”

On June 3, 2010, EPA issued a final rule establishing a “common sense” approach to addressing GHG emissions from stationary sources under the CAA permitting programs. The “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule,” or “Tailoring Rule,” set thresholds for GHG emissions that define when permits under the NSR PSD and title V operating permit programs are required for new and existing industrial facilities

(see 75 FR 31514). The Tailoring Rule set the GHG PSD applicability threshold at 75,000 tpy as expressed in carbon dioxide equivalent; if states have not adopted this threshold, sources with GHG emissions above 100 tpy or 250 tpy (depending on source category) would be subject to PSD, effective January 2, 2011. The lower thresholds could potentially result in certain residential and commercial sources triggering GHG PSD requirements.

On December 23, 2010, EPA issued a subsequent series of rules that put the necessary framework in place to ensure that industrial facilities can get CAA permits covering their GHG emissions when needed, and that facilities emitting GHGs at levels below those established in the Tailoring Rule do not need to obtain CAA permits.<sup>7</sup> Included in this series of rules was EPA’s issuance of the “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans,” referred to as the PSD SIP “Narrowing Rule” on December 30, 2010 (see 75 FR 82536). The Narrowing Rule limits, or “narrows,” EPA’s approval of PSD programs that were previously approved into SIPs; the programs in question are those that apply PSD to sources that emit GHG. Specifically, the effect of the Narrowing Rule is that provisions that are no longer approved—e.g., portions of already approved SIPs that apply PSD to GHG emissions increases from sources emitting GHG below the Tailoring Rule thresholds—now have the status of having been submitted by the state but not yet acted upon by EPA. In other words, the Narrowing Rule focuses on eliminating the PSD obligations under Federal law for sources below the Tailoring Rule thresholds.

On September 28, 2011 (76 FR 59899), EPA approved revisions to Indiana’s PSD SIP that included the adoption of the Federal thresholds for PSD permitting of GHG-emitting sources. Indiana’s December 12, 2011, submission states that it intended for our September 28, 2011, approval to satisfy applicable GHG permitting requirements related to their 2008 Pb and ozone NAAQS infrastructure SIP. Therefore, EPA proposes that Indiana’s GHG permitting program has met this set of requirements related to section 110(a)(2)(C) and (E) for the 2008 Pb and ozone NAAQS.<sup>8</sup>

<sup>7</sup> <http://www.epa.gov/NSR/actions.html#2010>.

<sup>8</sup> Section 110(a)(2)(E) requires that states have the resources to administer an air quality management program. Some states that are not covered by the

EPA reiterates that minor NSR regulations and NSR reform regulations are not in the scope of infrastructure SIP actions. Therefore, we are not proposing to approve or disapprove existing minor NSR regulations or NSR reform regulations for Indiana’s 2008 Pb and ozone NAAQS infrastructure SIP. To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutants. EPA approved Indiana’s minor NSR program on October 7, 1994 (see 59 FR 51108), and since that date, IDEM and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2008 Pb and ozone NAAQS.

Furthermore, various sub-elements in this section overlap with elements of section 110(a)(2)(D)(i), section 110(a)(2)(E) and section 110(a)(2)(J). These links will be discussed in the appropriate areas below.

#### D. Section 110(a)(2)(D)—Interstate Transport

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.

With respect to the 2008 Pb NAAQS, the 2011 Memo notes that the physical properties of Pb prevent it from experiencing the same travel or formation phenomena as PM<sub>2.5</sub> or ozone. Specifically, there is a sharp decrease in Pb concentrations as the distance from a Pb source increases. Accordingly, it may be possible for a source in a state to emit Pb at a location and in such quantities that contribute significantly to nonattainment in, or interference with maintenance by, any other state. However, EPA anticipates that this would be a rare situation, e.g., sources emitting large quantities of Pb are in close proximity to state boundaries. The 2011 Memo suggests that the applicable interstate transport

Narrowing Rule may not be able to adequately demonstrate that they have adequate personnel to issue GHG permits to all sources that emit GHG under the Tailoring Rule thresholds.

requirements of section 110(a)(2)(D)(i)(I) can be met through a state's assessment as to whether or not emissions from Pb sources located in close proximity to its borders have emissions that impact a neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state. One way that a state's conclusion could be supported is by the technical support documents used for initial area designations for Pb.

In its infrastructure SIP submission, IDEM noted that a small portion of Delaware County in east central Indiana was designated as nonattainment for the 2008 Pb NAAQS (see 75 FR 71033). IDEM observed that this area is approximately 30 miles from the Indiana-Ohio state line. IDEM further noted that there are no other areas with sources that emit Pb at or above 0.5 tpy. EPA does not believe that the elevated levels of ambient Pb concentrations in Delaware County (or emissions from any other county) would cause or contribute to a violation of the 2008 Pb NAAQS in Ohio, or create a situation in Ohio where maintenance of the 2008 Pb NAAQS was not possible. The final technical support document for Delaware County supports the notion that the ambient concentrations of Pb are not expected to exceed the NAAQS outside of the nonattainment boundaries. Therefore, EPA proposes that Indiana has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

In this notice, we are not proposing to act on the portions of Indiana's submission intended to address the interstate transport requirements of section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. Rather, we intend to take separate action on Indiana's satisfaction of these requirements.

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.

EPA notes that Indiana's satisfaction of the applicable infrastructure SIP PSD requirements for the 2008 lead and ozone NAAQS has been detailed in the section addressing section 110(a)(2)(C). EPA notes that the proposed actions in that section related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

EPA has previously approved revisions to Indiana's SIP that meet certain requirements obligated by the

Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that: Explicitly identify NO<sub>x</sub> as a precursor to ozone, explicitly identify SO<sub>2</sub> and NO<sub>x</sub> as precursors to PM<sub>2.5</sub>, and regulate condensable PM<sub>2.5</sub> and PM<sub>10</sub> in applicability determinations and establishing emissions limits. EPA has also previously approved revisions to Indiana's SIP adopting the Federal Tailoring Rule thresholds for GHG emitting sources for PSD permitting. Indiana's SIP contains provisions that adequately address the 2008 Pb NAAQS, and in this action, EPA is also proposing to approve revisions to Indiana's SIP that incorporate the PM<sub>2.5</sub> increments and the associated implementation regulations including the major source baseline date, trigger date, and level of significance for PM<sub>2.5</sub> per the 2010 NSR Rule. States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through a suitable NNSR program that addresses any pollutants for which there is a designated nonattainment areas within the state. Indiana's EPA-approved NNSR regulations are contained as part of their PSD program regulations, and can be found in 326 IAC 2-2. Specifically, these regulations contain provisions for how the state must treat and control sources in ozone and Pb nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR part 51. Therefore EPA proposes that Indiana has met all of the applicable PSD requirements for the 2008 Pb and ozone NAAQS related to section 110(a)(2)(D)(i)(II).

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 2009 Memo and the 2011 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. EPA's final approval of Indiana's regional haze plan was published on June 11, 2012 (see 77 FR 34218). Therefore, EPA proposes that Indiana has met this set of infrastructure SIP requirements of section 110(a)(2)(D)(i)(II) for the 2008 Pb and ozone NAAQS.

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 (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.

Indiana has provisions in its EPA-approved PSD program requiring new or modified sources to notify neighboring states of potential negative air quality impacts, and has referenced this program as having adequate provisions to meet the requirements of section 126(a). EPA is proposing that Indiana has met the infrastructure SIP requirements of section 126(a) with respect to the 2008 Pb and ozone NAAQS. Indiana does not have any obligations under any other section of section 126, nor does it have any pending obligations under section 115. EPA therefore is proposing that Indiana has met all applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii).

#### *E. Section 110(a)(2)(E)—Adequate 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.

#### *Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues*

Indiana's biennial budget and their environmental performance partnership agreement with EPA document funding and personnel levels for IDEM every 2 years. As discussed in earlier sections, IC 13-14-1-12 provides the Commissioner of IDEM with the authority to enforce air pollution control laws. Furthermore, IC 13-14-8, IC 13-17-3-11, and IC 13-17-3-14 contain the authority for IDEM to adopt air emissions standards and compliance schedules. EPA proposes that Indiana has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2008 Pb and ozone NAAQS.

As noted above in the discussion addressing section 110(a)(2)(C), the resources needed to permit all sources emitting more than 100 tpy or 250 tpy

(as applicable) of GHG would require more resources than some states appear to have. As previously discussed, however, EPA approved revisions to Indiana's PSD program adopting the Federal Tailoring Rule thresholds for GHG on September 28, 2011. Therefore, Indiana's SIP as it relates to GHG-emitting sources for PSD does not involve permitting sources smaller than the Tailoring Rule thresholds, and EPA proposes that Indiana retains the resources necessary to implement the requirements of its SIP.

#### Sub-Element 2: State Board Requirements Under Section 128 of the CAA

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 November 29, 2012, IDEM submitted rules regarding its Environmental Rules Board at IC 13-13-8 for incorporation into the SIP, pursuant to section 128 of the CAA. On December 12, 2012, IDEM provided a supplemental submission clarifying that the Environmental Rules Board established by IC 13-13-8, which has the authority to adopt environmental regulations under IC 4-22-2 and IC 13-14-9, does not have the authority to approve enforcement orders or permitting actions as outlined in section 128(a)(1) of the CAA. Therefore, section 128(a)(1) of the CAA is not applicable in Indiana.

Under section 128(a)(2), the head of the executive agency with the power to approve enforcement orders or permits must adequately disclose any potential conflicts of interest. IC 13-13-8-11 "Disclosure of conflicts of interest" contains provisions that adequately satisfy the requirements of section 128(a)(2). This section requires that each member of the board shall fully disclose any potential conflicts of interest relating to permits or enforcement orders under the Federal CAA, as amended by the CAA Amendments of 1990. IC 13-13-8-4 defines the membership of the board, and the

commissioner (of IDEM) or his/her designee is explicitly included as a member of the board. Therefore, when evaluated together in the context of section 128(a)(2), the commissioner (of IDEM) or his/her designee must fully disclose any potential conflicts of interest relating to permits or enforcement orders under the CAA. EPA concludes that IDEM's submission as it relates to the state board requirements under section 128 is consistent with applicable CAA requirements. As a result, we are proposing to approve these rules into the SIP. The rules consist of IC 13-13-8-1, IC 13-13-8-2(a), IC 13-18-8-2(b), IC 13-13-8-3, IC 13-13-8-4, and IC 13-13-8-11. On May 22, 2013, IDEM requested that these rules satisfy not only the applicable requirements of section 128 of the CAA, but that they satisfy any applicable requirements of section 110(a)(2)(E) for the 2008 Pb and ozone NAAQS. Therefore, EPA is proposing that IDEM has satisfied the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2008 Pb and ozone 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.

The Indiana state rules for monitoring requirements are contained in 326 IAC 3. Additional emissions reporting requirements are found in 326 IAC 2-6. Emission reports are available upon request by EPA or other interested parties. EPA proposes that Indiana has satisfied the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2008 Pb and ozone NAAQS.

#### G. Section 110(a)(2)(G)—Emergency Powers

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 2011 Memo states that infrastructure SIP submissions should specify authority, rested in an appropriate official, to restrain any source from causing or contributing to Pb emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

326 IAC 11-5 establishes air pollution episode levels based on concentrations of criteria pollutants. This rule requires that emergency reduction plans be submitted to the Commissioner of IDEM by major air pollution sources, and these plans must include actions that will be taken when each episode level is declared, to reduce or eliminate emissions of the appropriate air pollutants. Similarly, under IC 13-17-4, Indiana also has the ability to declare an air pollution emergency and order all persons causing or contributing to the conditions warranting the air pollution emergency to immediately reduce or discontinue emission of air contaminants. EPA proposes that Indiana has met the applicable infrastructure SIP requirements of section 110(a)(2)(G) related to authority to implement measures to restrain sources from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment with respect to the 2008 Pb and ozone NAAQS.

As indicated in the 2011 Memo, EPA believes that the central components of a contingency plan for the 2008 Pb NAAQS would be to reduce emissions from the source at issue and to communicate with the public as needed. Where a state believes, based on its inventory of Pb sources and historic monitoring data, that it does not need a more specific contingency plan beyond having authority to restrain any source from causing or contributing to an imminent and substantial endangerment, then the state could provide such a detailed rationale in place of a specific contingency plan.

EPA has reviewed historic data at Pb monitoring sites throughout Indiana, and believes that a specific contingency plan beyond having authority to restrain any source from causing or contributing to an imminent and substantial endangerment is not necessary at this time. For example, one way to quantify the possibility of imminent and substantial endangerment in this context would be a daily monitored value for Pb that could by itself cause

a violation of the 2008 Pb NAAQS.<sup>9</sup> EPA has reviewed data from 2010–2012 (the most recent consecutive 36-month block of complete data) and observes that no such daily monitored value exists.

As described in the section detailing interstate transport of Pb, EPA does not anticipate other areas in Indiana needing specific contingency measures due to low Pb emissions. EPA proposes that Indiana has met the applicable infrastructure SIP requirements of section 110(a)(2)(G) related to contingency measures for the 2008 Pb and ozone 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 to an EPA finding that the SIP is substantially inadequate.

IDEM continues to update and implement needed revisions to Indiana's SIP as necessary to meet ambient air quality standards. As discussed in previous sections, authority to adopt emissions standards and compliance schedules is found at IC 13–4–8, IC 13–17–3–4, IC 13–17–3–11, and IC 13–17–3–14. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2008 Pb and ozone NAAQS.

#### *I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under 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 Notifications; PSD; Visibility Protection*

The evaluation of Indiana's submission addressing the requirements of section 110(a)(2)(J) are described below.

#### *Sub-Element 1: Consultation With Government Officials*

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements. IDEM actively participates in the regional planning efforts that include state rule developers, representatives from the FLMs, and other affected stakeholders. Additionally, Indiana is an active member of the Lake Michigan Air Director's Consortium, which consists of collaboration with the States of Illinois, Wisconsin, Michigan, Minnesota, and Ohio. EPA proposes that Indiana has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb and ozone NAAQS.

#### *Sub-Element 2: Public Notification*

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and must enhance public awareness of measures that can be taken to prevent exceedances.

IDEM monitors air quality data daily, and reports the air quality index to the interested public and media if necessary. IDEM also participates and submits information to EPA's AIRNOW program, and maintains SmogWatch, which is an informational tool created by IDEM to share air quality forecasts for each day. SmogWatch provides daily information about ground-level ozone, particulate matter concentration levels, health information, and monitoring data for seven regions in Indiana. IDEM also maintains a publicly available Web site that allows interested members of the community and other stakeholders to view current monitoring data summaries, including those for ozone and Pb.<sup>10</sup> IDEM has also published fact sheets available to the public that pertain the 2008 Pb NAAQS, including strategies to mitigate human exposure.<sup>11</sup> EPA proposes that Indiana has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb and ozone NAAQS.

#### *Sub-Element 3: PSD*

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. IDEM's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and

EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J). Our proposed actions are reiterated below.

EPA has previously approved revisions to Indiana's SIP that meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that: Explicitly identify NO<sub>x</sub> as a precursor to ozone, explicitly identify SO<sub>2</sub> and NO<sub>x</sub> as precursors to PM<sub>2.5</sub>, and regulate condensable PM<sub>2.5</sub> and PM<sub>10</sub> in applicability determinations and emissions limits. EPA has also previously approved revisions to Indiana's SIP adopting the Federal Tailoring Rule thresholds for GHG emitting sources for PSD permitting. Indiana's SIP contains provisions that adequately address the 2008 Pb NAAQS, and in this action, EPA is also proposing to approve revisions to Indiana's SIP that incorporate the PM<sub>2.5</sub> increments and the associated implementation regulations per the 2010 NSR Rule. Therefore, EPA proposes that Indiana has met all of the infrastructure SIP requirements for PSD associated with section 110(a)(2)(D)(J) for the 2008 Pb and ozone NAAQS.

#### *Sub-Element 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, however, 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. This would be the case even in the event a secondary PM<sub>2.5</sub> NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2008 Pb and ozone NAAQS.

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

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

IDEM continues to review the potential impact of major and some minor new and modified sources using computer models. Indiana's rules regarding air quality modeling are

<sup>9</sup> See appendix R to 40 CFR part 50 for data handling conventions and computations necessary for determining when the NAAQS are met.

<sup>10</sup> See <http://www.in.gov/idem/airquality/2489.htm>.

<sup>11</sup> See, e.g., [http://www.in.gov/idem/files/factsheet\\_air\\_quality\\_lead.pdf](http://www.in.gov/idem/files/factsheet_air_quality_lead.pdf).

contained in 326 IAC 2–2–4, 326 IAC 2–2–5, 326 IAC 2–2–6, and 326 IAC 2–2–7. These modeling data are available to EPA or other interested parties upon request. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2008 Pb and ozone 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.

IDEM implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62969); revisions to the program were approved on August 13, 2002 (67 FR 52615). In addition to the title V permit program, IDEM’s EPA-approved PSD program, specifically contained in 326 IAC 2–1.1–07 contains the provisions, requirements, and structures associated

with the costs for reviewing, approving, implementing, and enforcing various types of permits. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(L) with respect to the 2008 Pb and ozone 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.

Any IDEM rulemaking procedure contained in IC 13–14–9 requires public participation in the SIP development process. In addition, IDEM ensures that the requirements of 40 CFR 51.102 are satisfied during the SIP development process. EPA proposes that Indiana has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2008 Pb and ozone NAAQS.

**V. What action is EPA taking?**

EPA is proposing to approve elements of Indiana’s submissions certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2008 Pb and ozone NAAQS. EPA is also proposing to approve portions of a submission from Indiana intended to meet EPA’s requirements its PSD program, specifically 326 IAC 2–2–6(b), 326 IAC 2–2–1(f)(1), 326 IAC 2–2–1(ee)(3), and 326 IAC 2–2–1(gg)(1)(C). In addition, EPA is proposing to approve a submission from Indiana intended to meet the state board requirements of section 128. Specifically, the rules consist of IC 13–13–8–1, IC 13–13–8–2(a), IC 13–18–8–2(b), IC 13–13–8–3, IC 13–13–8–4, and IC 13–13–8–11.

EPA’s proposed actions for Indiana’s satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Pb NAAQS	2008 ozone NAAQS
(A): Emission limits and other control measures .....	A	A
(B): Ambient air quality monitoring and data system .....	A	A
(C)1: Enforcement of SIP measures .....	A	A
(C)2: PSD Provisions for Pb and ozone .....	A	A
(C)3: PM <sub>2.5</sub> precursors and PM <sub>2.5</sub> /PM <sub>10</sub> condensables for PSD .....	A	A
(C)4: PM <sub>2.5</sub> increments for PSD .....	A	A
(C)5: GHG permitting thresholds in PSD regulations .....	A	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS .....	A	NA
(D)2: PSD .....	(**)	(**)
(D)3: Visibility Protection .....	A	A
(D)4: Interstate Pollution Abatement .....	A	A
(D)5: International Pollution Abatement .....	A	A
(E)1: Adequate resources .....	A	A
(E)2: State boards .....	A	A
(F): Stationary source monitoring system .....	A	A
(G): Emergency power .....	A	A
(H): Future SIP revisions .....	A	A
(I): Nonattainment area plan or plan revisions under part D .....	NA	NA
(J)1: Consultation with government officials .....	A	A
(J)2: Public notification .....	A	A
(J)3: PSD .....	(**)	(**)
(J)4: Visibility protection (Regional Haze) .....	+	+
(K): Air quality modeling and data .....	A	A
(L): Permitting fees .....	A	A
(M): Consultation and participation by affected local entities .....	A	A

In the table above, the key is as follows:  
 A Approve.  
 NA No Action/Separate Rulemaking.  
 D Disapprove.  
 + Not relevant in these actions.  
 \*\* Previously discussed in element (C).

**VI. 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 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.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Ozone, Reporting and recordkeeping requirements.

Dated: July 31, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2013–20155 Filed 8–16–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2010–0566; FRL–9900–18–Region 5]

### Approval and Promulgation of Air Quality Implementation Plans; Michigan

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

**ACTION:** Proposed rule.

**SUMMARY:** On February 6, 2013, EPA proposed to approve revisions to the State of Michigan’s Clean Air Act State Implementation Plan (SIP) that Michigan had submitted on March 24, 2009. Michigan’s submittal included revisions to Part 1, Definitions; Part 2, Air Use Approval; and Part 19, New Source Review for Sources Impacting Nonattainment Areas, of the Michigan rules. EPA is revising the February 6, 2013, proposed approval to announce that we will not take action on the changes to Part 2 Air Use Approval rules and of the Part 2 revision submittals on November 12, 1993, May 16, 1996, April 3, 1998, September 2, 2003, and March 24, 2009, at this time. EPA is proposing to rescind Michigan’s rule 336.1220 from its SIP. Michigan included this request to rescind this portion of the rule in its March 24, 2009, submittal as part of the Part 19 New Source Review rule approval. The rescission of rule 336.1220 will eliminate having differing nonattainment rules in the State SIP.

**DATES:** Comments must be received on or before September 18, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0566, by one of the following methods:

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

2. *Email:* [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov).

3. *Fax:* (312) 886–0968.

4. *Mail:* Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2010–0566. 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](http://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 information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://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](http://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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* 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., CBI 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 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 Constantine Blathras, Environmental Engineer, at (312) 886–0671 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Constantine Blathras, Environmental Engineer, Air Permits, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671, [Blathras.constantine@epa.gov](mailto:Blathras.constantine@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 should I consider as I prepare my comments for EPA?