

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

Dated: June 29, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2016-0327; FRL-9964-96-Region 5]

### Air Plan Approval; Minnesota; 2008 Ozone Transport

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a May 26, 2016, State Implementation Plan (SIP) submission from Minnesota that is intended to demonstrate that the Minnesota SIP meets certain interstate transport requirements of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). This submission addresses the requirement that each SIP contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. EPA is proposing to approve this SIP as containing adequate provisions to ensure that Minnesota emissions do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state.

**DATES:** Comments must be received on or before August 16, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2016-0327 at <https://www.regulations.gov> or via email to [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider

comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, [svingen.eric@epa.gov](mailto:svingen.eric@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. Background.
- II. EPA’s Analysis of Minnesota’s Submittal
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews.

#### I. Background

On March 12, 2008, EPA revised the levels of the primary and secondary ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable “infrastructure” elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain “good neighbor” provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements within CAA section 110(a)(2)(D)(i). This action addresses the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I). These sub-elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” or “interfere with maintenance” of the applicable air quality standard in any other state.

#### II. EPA’s Analysis of Minnesota’s Submittals

On May 26, 2016, the State of Minnesota submitted a revision to its SIP to address the first two sub-elements

of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I). Specifically, Minnesota’s submission asserts that the state’s SIP contains adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” or “interfere with maintenance” of the 2008 ozone standard in any other state. The SIP submission highlights rules and statutes already in Minnesota’s SIP that limit emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC), the precursor pollutants contributing to ozone formation. Minnesota primarily limits VOC emissions through emission limitations in state-issued part 70 permits. Minnesota has also incorporated by reference EPA’s National Emission Standards for Hazardous Air Pollutants, which further limit VOC emissions. *See* Minn. R. 7011.7000–9990. Minnesota limits NO<sub>x</sub> emissions through application of Minn. R. 7011.0500–0553, “Indirect Heating Fossil Fuel Burning Equipment,” as well as Minn. R. 7011.1700–1705, “Nitric Acid Plants.” Additionally, an administrative order issued to the Xcel Energy Sherburne County Generating Station (Sherco) as part of Minnesota’s Regional Haze SIP imposes additional limits on NO<sub>x</sub> emissions in Minnesota. Finally, Minnesota sources are also subject to a Federal Implementation Plan (FIP) for the Cross-State Air Pollution Rule (CSAPR) at 40 CFR 52.1240, and are required to reduce annual emissions of NO<sub>x</sub> in support of the 2006 NAAQS for fine particulate matter (PM<sub>2.5</sub>).

EPA developed technical information and a related analysis to assist states with meeting section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone NAAQS, and used this technical analysis to support the CSAPR Update for the 2008 Ozone NAAQS (“CSAPR Update”).<sup>1</sup> As explained below, this analysis supports the conclusion of Minnesota’s analysis regarding interstate transport for the 2008 ozone NAAQS.

In the technical analysis supporting the CSAPR Update, EPA used detailed air quality analyses to determine where projected nonattainment or maintenance areas would be and whether emissions from a state would contribute to downwind air quality problems at those projected nonattainment or maintenance receptors. Specifically, EPA determined whether a state’s contributing emissions were at or above a specific threshold (*i.e.*, one percent of the ozone NAAQS).

<sup>1</sup> 81 FR 74504 (October 26, 2016).

If a state's contribution did not exceed the one percent threshold, the state was not considered "linked" to identified downwind nonattainment and maintenance receptors and was therefore not considered to significantly contribute to nonattainment or interfere with maintenance of the standard in those downwind areas. If a state's contribution was equal to or exceeded the one percent threshold, that state was considered "linked" to the downwind nonattainment or maintenance receptor(s) and the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the state's obligation pursuant to CAA section 110(a)(2)(D)(i)(I).

As discussed in the CSAPR Update, the air quality modeling contained in EPA's technical analysis: (1) Identified locations in the U.S. where EPA anticipates nonattainment or maintenance issues in 2017 for the 2008 ozone NAAQS (these are identified as nonattainment and maintenance receptors), and (2) quantified the projected contributions from emissions from upwind states to downwind ozone concentrations at the receptors in 2017. See CSAPR Update at 81 FR 74526. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 ozone NAAQS in 2017. EPA used nationwide state-level ozone source apportionment modeling (the CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case NO<sub>x</sub> and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous states in the U.S. and adjacent portions of Canada and Mexico. *Id.* at 81 FR 74526–74527. The modeling data released to support the final CSAPR Update are the most up-to-date information EPA has developed to inform our analysis of upwind state linkages to downwind air quality problems for the 2008 ozone NAAQS. See "Air Quality Modeling TSD for the Final CSAPR Update" in the docket for CSAPR Update at 81 FR 74504 for more details regarding EPA's modeling analysis.

Consistent with the framework established in the original CSAPR

rulemaking, EPA's technical analysis in support of the CSAPR Update applied a threshold of one percent of the 2008 ozone NAAQS of 75 ppb (0.75 ppb) to identify linkages between upwind states and the downwind nonattainment and maintenance receptors. See CSAPR Update, 81 FR 74518–74519. EPA considered states to be "linked" to a specific downwind receptor if emissions from that state meet or exceed that one percent threshold. EPA analyzed emissions from those "linked" states to determine whether emissions reductions were required for purposes of CAA section 110(a)(2)(D)(i)(I). EPA determined that one percent was an appropriate threshold to use in that analysis because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states at that threshold. In response to commenters who advocated a higher or lower threshold than one percent, EPA compiled the contribution modeling results for the CSAPR Update to analyze the impact of different possible thresholds for the eastern United States. EPA's analysis showed that the one percent threshold captures a high percentage of the total pollution transport affecting downwind states. EPA's analysis further showed that application of a lower threshold would result in relatively modest increases in the overall percentage of ozone transport pollution captured, while the use of higher thresholds would result in a relatively large reduction in the overall percentage of ozone pollution transport captured relative to the levels captured at one percent at the majority of the receptors. *Id.*; see also Air Quality Modeling Final Rule Technical Support Document for the Final CSAPR Update, Appendix F, Analysis of Contribution Thresholds. This approach is consistent with the use of a one percent threshold to identify those states "linked" to air quality problems with respect to the 1997 ozone NAAQS in the original CSAPR rulemaking, wherein EPA noted that there are adverse health impacts associated with ambient ozone even at low levels. 76 FR 48208, 48236–48237 (August 8, 2011).

EPA's air quality modeling for the final CSAPR Update projects that Minnesota emissions are projected to contribute amounts less than one percent of the 2008 ozone NAAQS to all receptors. The modeling indicates that Minnesota's largest contribution to any projected downwind nonattainment site is 0.40 ppb and Minnesota's largest contribution to any projected downwind maintenance-only site is 0.47 ppb. 80

FR 46271, 46277 (August 4, 2015). These values are below the one percent screening threshold of 0.75 ppb, and therefore there are no identified linkages between Minnesota and 2017 downwind projected nonattainment and maintenance sites. In Minnesota's submission, the state provides data demonstrating that statewide NO<sub>x</sub> and VOC emissions have been decreasing in recent years. This indicates that existing controls have been sufficient in meeting Minnesota's transport obligations for ozone. This further suggests that Minnesota will likely continue to have insignificant contributions to downwind nonattainment and maintenance problems for ozone.

EPA agrees with the state's technical information and conclusion. EPA's modeling also confirms this finding. Based on the modeling data and the information and analysis provided in Minnesota's SIP, we are proposing to approve Minnesota's interstate transport SIP for purposes of meeting the CAA section 110(a)(2)(D)(i)(I) requirements as to the 2008 ozone standard. EPA's modeling confirms the results of the state's analysis: Minnesota does not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone standard in any other state.

### III. What action is EPA taking?

EPA is proposing to approve Minnesota's interstate transport SIP for purposes of meeting the CAA section 110(a)(2)(D)(i)(I) requirements of the 2008 ozone standard.

### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a

tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: July 6, 2017.

**Cheryl L. Newton,**

*Acting Regional Administrator, Region 5.*

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