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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2016-0343; FRL-9973-49-Region 5]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving elements of a state implementation plan (SIP) submission from Indiana regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA proposed this action on August 31, 2017, and received one public comment in response.

**DATES:** This final rule is effective on March 5, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0343. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, 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 through [www.regulations.gov](http://www.regulations.gov) or 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 Eric Svigen, Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Eric Svigen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18),

Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, [svigen.eric@epa.gov](mailto:svigen.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. What is the background of this SIP submission?
- II. What comments were submitted on the proposed rulemaking?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

#### I. What is the background of this SIP submission?

##### A. What state submission does this rulemaking address?

This rulemaking addresses a June 10, 2016, submission from the Indiana Department of Environmental Management (IDEM) intended to address all applicable infrastructure requirements for the 2012 PM<sub>2.5</sub> NAAQS. On December 28, 2016, IDEM supplemented this submittal with additional documentation intended to address the transport requirements of Section 110(a)(2)(D) for the 2012 PM<sub>2.5</sub> NAAQS; EPA will take action on this supplement in a separate rulemaking.

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

Under section 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2012 PM<sub>2.5</sub> NAAQS. 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 the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub><sup>1</sup> National Ambient Air Quality Standards” (2007 Guidance) and has issued additional guidance documents, the most recent on September 13, 2013, entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and (2)” (2013 Guidance). The SIP submission referenced in this rulemaking pertains to the applicable requirements of

section 110(a)(1) and (2), and addresses the 2012 PM<sub>2.5</sub> NAAQS.

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

EPA is acting upon the SIP submission from Indiana that addresses the infrastructure requirements of CAA section 110(a)(1) and (2) for the 2012 PM<sub>2.5</sub> NAAQS. The requirement for states to make SIP submissions of this type arises out of CAA section 110(a)(1), which states that states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA section 110(a)(1) and (2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as SIP submissions that address the nonattainment planning requirements of part D and the prevention of significant deterioration (PSD) requirements of part C of title I of the CAA, and “regional haze SIP” submissions required to address the visibility protection requirements of CAA section 169A.

In this rulemaking, EPA will not take action on three substantive areas of section 110(a)(2): (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (“SSM”) at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to “director's variance” or “director's discretion” that purport to permit revisions to SIP approved emissions limits with limited public notice or without requiring further approval by EPA, that may be contrary to the CAA; and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's “Final NSR Improvement Rule,” 67 FR 80186 (December 31,

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

2002), as amended by 72 FR 32526 (June 13, 2007) (“NSR Reform”). Instead, EPA has the authority to address each one of these substantive areas in separate rulemakings. A detailed history, interpretation, and rationale as they relate to infrastructure SIP requirements can be found in EPA’s May 13, 2014, proposed rule entitled, “Infrastructure SIP Requirements for the 2008 Lead NAAQS” in the section, “What is the scope of this rulemaking?” (see 79 FR 27241 at 27242–27245).

**II. What comments were submitted on the proposed rulemaking?**

On August 31, 2017 (82 FR 41379), EPA proposed to approve the above-cited elements of Indiana’s infrastructure SIP submission for the 2012 PM<sub>2.5</sub> NAAQS. In response to this proposed action, EPA received one comment from a person identifying as a “citizen of Indiana and a law student.” The commenter expressed support for EPA’s proposed approval of the Indiana infrastructure SIP for the PM<sub>2.5</sub> NAAQS, but “encourage[d] some sort of change that would be stricter on states regarding localities.” EPA thanks the commenter for her/his thoughts and support regarding rulemakings.

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

EPA is taking final action to approve most elements of a submission from Indiana certifying that its current SIP is sufficient to meet the required infrastructure elements under section 110(a)(1) and (2) for the 2012 PM<sub>2.5</sub> NAAQS. EPA’s actions for the state’s satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2012 PM <sub>2.5</sub>
(A)—Emission limits and other control measures .....	A
(B)—Ambient air quality monitoring/data system .....	A
(C)1—Program for enforcement of control measures .....	A
(C)2—PSD .....	A
(D)1—I Prong 1: Interstate transport—significant contribution .....	NA
(D)2—I Prong 2: Interstate transport—interfere with maintenance .....	NA
(D)3—II Prong 3: Interstate transport—prevention of significant deterioration .....	A
(D)4—II Prong 4: Interstate transport—protect visibility .....	NA
(D)5—Interstate and international pollution abatement .....	A
(E)1—Adequate resources .....	A
(E)2—State board requirements .....	A
(F)—Stationary source monitoring system .....	A
(G)—Emergency power .....	A

Element	2012 PM <sub>2.5</sub>
(H)—Future SIP revisions .....	A
(I)—Nonattainment planning requirements of part D .....	(*)
(J)1—Consultation with government officials .....	A
(J)2—Public notification .....	A
(J)3—PSD .....	A
(J)4—Visibility protection .....	(*)
(K)—Air quality modeling/data .....	A
(L)—Permitting fees .....	A
(M)—Consultation and participation by affected local entities .....	A

In the above table, the key is as follows:

A .....	Approve.
NA .....	No Action/Separate Rulemaking.
* .....	Not germane to infrastructure SIPs.

**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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 2, 2018. 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 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 17, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

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.*

■ 2. In § 52.770, the table in paragraph (e) is amended by adding an entry in alphabetical order for “Section 110(a)(2) infrastructure requirements for the 2012 PM<sub>2.5</sub> NAAQS” to read as follows:

**§ 52.770 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS**

Title	Indiana date	EPA approval	Explanation
* * * Section 110(a)(2) infrastructure requirements for the 2012 PM <sub>2.5</sub> NAAQS. * * *	6/10/2016	2/1/2018, [Insert <b>Federal Register</b> citation]. * * *	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) except visibility, (D)(ii), (E), (F), (G), (H), (J) except visibility, (K), (L), and (M). * * *

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R08–OAR–2017–0339; FRL–9973–17–Region 8]

**Montana Second 10-Year Carbon Monoxide Maintenance Plan for Missoula**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to re-approve a State Implementation Plan (SIP) revision submitted by the State of Montana. On September 19, 2016, the Governor of Montana submitted to the EPA a Clean Air Act (CAA) section 175A(b) second 10-year maintenance plan for the Missoula, Montana area for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS). This limited maintenance plan (LMP) addresses maintenance of the CO NAAQS for a second 10-year period beyond the original redesignation. This action is being taken under sections 110 and 175A of the CAA.

**DATES:** Effective February 1, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA–R08–OAR–2017–0339. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., 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 through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.  
**FOR FURTHER INFORMATION CONTACT:** Adam Clark, (303) 312–7104, [clark.adam@epa.gov](mailto:clark.adam@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The factual background for this action is discussed in detail in our September 14, 2017 direct final rule (DFR) and proposal (82 FR 43180, 82 FR 43208) approving the revised Missoula Maintenance Plan into the Montana SIP. The EPA received one adverse comment on the rulemaking and attempted to withdraw the DFR prior to the effective date of November 13, 2017. However, the EPA inadvertently did not withdraw the DFR prior to that date and the rule became prematurely effective on November 13, 2017, revising the Montana SIP to reflect the approval of the revised Missoula Maintenance Plan. In this final rulemaking, the EPA is responding to the comments submitted on the proposed revision to the Montana SIP, and is re-approving the revised Missoula Maintenance Plan into the Montana SIP. The background information found in the DFR is still relevant and our September 14, 2017 proposal provides the basis for this final action.

The EPA finds that there is good cause under section 553(d)(3) of the Administrative Procedure Act (APA) to

make this action re-approving the revisions to the Montana SIP effective upon publication in the **Federal Register**. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). This rule does not create any new regulatory requirements and does not change any existing regulatory requirements. For these reasons, the EPA finds good cause under APA section 553(d)(3) for the re-approval to become effective on the date of publication of this action.

**II. Response to Comments**

The EPA received two anonymous public comments, one which we considered adverse, on our action to approve Montana’s September 19, 2016 SIP submittal. Below is a summary of each comment and the EPA’s response.

*Comment:* The first commenter asked whether we were “expecting any push-back” from businesses in extending the carbon monoxide plan for another 10 years.

*Response:* Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state actions, provided that they meet the criteria of the CAA. With that, the EPA notes that we did not receive any comments from any individual businesses or business groups.

*Comment:* The second commenter asserted that the EPA had failed to consider the effects of approving the SIP submission on the economy or energy independence as required by a March