

Court of Appeals for the appropriate circuit by November 29, 2021. 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, Volatile organic compounds.  
Dated: September 22, 2021.  
**Edward H. Chu,**  
*Acting Regional Administrator, Region 7.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:  
*Authority:* 42 U.S.C. 7401 *et seq.*

**Subpart AA—Missouri**

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry “10–5.540” to read as follows:

**§ 52.1320 Identification of plan.**  
\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED MISSOURI REGULATIONS**

Missouri citation	Title	State effective date	EPA approval date	Explanation
<b>Missouri Department of Natural Resources</b>				
*	*	*	*	*
<b>Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area</b>				
*	*	*	*	*
10–5.540 .....	Control of Emissions From Batch Process Operations.	7/30/2020	9/29/2021, [insert Federal Reg- ister citation].	
*	*	*	*	*

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[FR Doc. 2021–21032 Filed 9–28–21; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R05–OAR–2017–0583; EPA–R05–OAR–2019–0311; EPA–R05–OAR–2020–0501; FRL–9056–02–R5]

**Air Plan Approval; Illinois; Infrastructure SIP Requirements for the 2012 PM<sub>2.5</sub> and 2015 Ozone NAAQS**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) revision submitted by the State of Illinois regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 PM<sub>2.5</sub> and 2015 ozone National Ambient Air Quality Standards (NAAQS). Additionally, EPA is approving the

infrastructure requirements related to Prevention of Significant Deterioration (PSD) for previous 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.

**DATES:** This direct final rule will be effective November 29, 2021, unless EPA receives adverse comments by October 29, 2021. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0583 (for PM<sub>2.5</sub>), EPA–R05–OAR–2019–0311 (for ozone), or EPA–R05–OAR–2020–0501 (for PSD) at <https://www.regulations.gov> or via email to [arra.sarah@epa.gov](mailto:arra.sarah@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:** Olivia Davidson, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental

Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0266, *davidson.olivia@epa.gov*. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

- I. What is the background of this SIP submission?
- II. What is EPA’s analysis of this SIP submission?
- III. Applicability of PSD Requirements
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

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

In this rulemaking, EPA is approving most elements of the September 29, 2017, and May 16, 2019, and September 22, 2020, submissions from the Illinois Environmental Protection Agency (IEPA) intended to address all applicable infrastructure requirements for the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS, respectively.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of the CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of action on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through our September 13, 2013, Infrastructure SIP Guidance and through regional actions on infrastructure submissions (EPA’s 2013 Guidance).<sup>1</sup>

<sup>1</sup> EPA discusses these ambiguities and elaborates on its approach to address them in our September 13, 2013 Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including EPA’s prior action on Minnesota’s infrastructure SIP to address the 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), 2010 sulfur dioxide (SO<sub>2</sub>), and 2012 fine particulate matter (PM<sub>2.5</sub>) NAAQS (80 FR 63436, October 20, 2015).

Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.<sup>2</sup> EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

#### **II. What is EPA’s analysis of this SIP submission?**

Pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. On June 23, 2017, and November 16, 2018, IEPA opened 30-day comment and request for public hearing periods for the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS, respectively. No requests for a public hearing were received during the comment periods. IEPA did not receive comments on portions of the submission on which EPA is acting. Comments were received on IEPA’s PSD permitting program, which has recently been approved by EPA on September 9, 2021 (86 FR 50459).

Illinois provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS, as applicable. The following review evaluates the state’s submissions.

##### **A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures**

This section requires SIPs to include enforceable emission limitations and other control measures, means or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable CAA requirements. Section 110(a)(2)(A) does not require that states submit regulations or emission limits specifically for attaining the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS. Those SIP provisions are due as part of each state’s attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A).<sup>3</sup> In the context of

<sup>2</sup> See *Montana Env’t Info Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

<sup>3</sup> See, e.g., EPA’s final rule on “National Ambient Air Quality Standards for Lead,” 73 FR 66964, 67034 (Nov. 12, 2008).

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.

The Illinois Environmental Protection Act is contained in chapter 415, section 5, of the Illinois Compiled Statutes (415 ILCS 5). 415 ILCS 5/4 provides IEPA with the authority to develop rules and regulations necessary to meet ambient air quality standards. Additionally, the Illinois Pollution Control Board (IPCB) was created under 415 ILCS 5, providing the IPCB with the authority to develop rules and regulations necessary to promote the purposes of the Illinois Environmental Protection Act. The IPCB ensures compliance with required laws and other elements of the State’s attainment plan that are necessary to attain the NAAQS, and to comply with the requirements of the CAA (415 ILCS 5/10).

EPA’s 2013 Guidance states that to satisfy section 110(a)(2)(A) requirements, “an air agency’s submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS, including precursors of the relevant NAAQS pollutant where applicable.” As identified by IEPA, Title 35 of the Illinois Administrative Code (IAC) Parts 202, 212, 214, 215, 217, 218, 219, and 225, contain SIP-approved emission standards and limitations for sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), volatile organic materials (VOMs), and ammonia (NH<sub>3</sub>), precursors of PM<sub>2.5</sub> and ozone. We believe that IEPA has the necessary components contained in Title 35 of the IAC to comply with the 2015 NAAQS ozone and 2012 PM<sub>2.5</sub> standard. In this rulemaking, EPA is not incorporating into Illinois’ SIP any new provisions in Illinois’ State rules that have not been previously approved by EPA. EPA is also not approving or disapproving any existing State provisions or rules related to start-up, shutdown or malfunction, or director’s discretion in the context of section 110(a)(2)(A). EPA finds that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

*B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System*

This section requires SIPs to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and, upon request, to make these data available to EPA. EPA's 2013 Guidance states that submission of annual monitoring network plans consistent with EPA's ambient air monitoring regulations at 40 CFR 58.10 is one way of satisfying a state's obligations under section 110(a)(2)(B). EPA's review of a state's 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.

In accordance with 40 CFR parts 53 and 58, IEPA continues to operate an air monitoring network that is used to determine compliance with the NAAQS. The provision at 415 ILCS 5/4 grants IEPA the authority to implement and administer the monitoring network. Furthermore, IEPA submits yearly monitoring network plans to EPA, and EPA approved the 2021 Annual Air Monitoring Network Plan on October 22, 2020.<sup>4</sup> Monitoring data from IEPA are entered into AQS in a timely manner, and the state provides EPA with prior notification when changes to its monitoring network or plan are being considered. IEPA publishes an annual report for the coming year on the Agency's website and provides for public comment. EPA finds that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

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

This section requires SIPs to set forth a program providing for enforcement of all SIP measures, and the regulation of construction of new and modified stationary sources to meet New Source Review (NSR) requirements under PSD and Nonattainment NSR (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements. EPA's 2013

Guidance states that the NNSR requirements of section 110(a)(2)(C) are generally outside the scope of infrastructure SIPs; however, a state must provide for regulation of minor sources and minor modifications (minor NSR).

*1. Program for Enforcement of Emission Limitations and Control Measures*

A state's infrastructure SIP submission should identify the statutes, regulations, or other provisions in the SIP that provide for enforcement of emission limits and control measures.

IEPA's Bureau of Air (BOA) includes a Compliance Section and Division of Legal Counsel, which conduct enforcement of emission limits and consult with IEPA on enforcement actions, including enforcement of minor NSR, PSD, and nonattainment NSR construction and operating permits. The provision at 415 ILCS 5/4 provides the Director of IEPA with the authority to implement and administer this enforcement program. The provisions at 415 ILCS 5/30 and 5/31 further grant IEPA the authority to implement and administer the enforcement program through investigations, complaints and notices of violation, and hearings. EPA finds that Illinois has met the program for enforcement of emission limitations and control measures requirements of section 110(a)(2)(C) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

*2. Minor NSR*

An infrastructure SIP submission should identify the existing EPA-approved SIP provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutant.

EPA approved Illinois' minor NSR program on May 31, 1972 (37 FR 10862). Since this date, IEPA and EPA have relied on the existing minor NSR program at 415 ILCS 5/9 and 5/39 to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS. EPA finds that Illinois has met the minor NSR requirements of section 110(a)(2)(C) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone PM<sub>2.5</sub> NAAQS.

*3. PSD*

The evaluation of each state's submission addressing the PSD requirements of section 110(a)(2)(C) covers: (i) PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone in the PSD program; (ii) identification of

precursors to PM<sub>2.5</sub><sup>5</sup> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub><sup>6</sup> condensables in the PSD program; (iii) PM<sub>2.5</sub> increments in the PSD program; and (iv) greenhouse gas (GHG) permitting and the "Tailoring Rule" in the PSD program.<sup>7</sup>

Previously, PSD permits in Illinois have been issued under a Federal Implementation Plan (FIP) incorporating 40 CFR 52.21. Since April 7, 1980, IEPA has issued PSD permits under a delegation agreement with EPA that authorizes IEPA to implement the FIP (January 29, 1981, 46 FR 9580). Under a November 16, 1981 amendment to the 1980 Delegation Agreement, IEPA also had the authority to amend or revise any PSD permit issued by EPA under the FIP. *See* 86 FR 22372, 22373 (Apr. 28, 2021). On September 22, 2020, IEPA submitted to EPA a request to revise the Illinois SIP to establish a SIP-approved PSD program in Illinois. IEPA requested that EPA incorporate into the SIP Title 35 IAC Part 204 containing the new PSD program, and revisions to Parts 252 and 203. The request was approved on September 9, 2021 (86 FR 50459), and addressed comments received during EPA's public comment period. IEPA continues to have the authority under State law to issue PSD permits. Consistent with the Illinois Environmental Policy Act, 35 IAC 204.820 and 204.850 require that a source may construct or operate any source or modification subject to PSD permitting only after obtaining an approval to construct or PSD permit. IEPA may rescind such PSD permit under 35 IAC 204.1340.

Some PSD requirements under section 110(a)(2)(C) overlap with elements of section 110(a)(2)(D)(i) and section 110(a)(2)(J). These links are discussed in the appropriate areas below.

<sup>5</sup> PM<sub>2.5</sub> refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, also referred to as "fine" particles.

<sup>6</sup> PM<sub>10</sub> refers to particles with an aerodynamic diameter of less than or equal to 10 micrometers.

<sup>7</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 (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 (77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address 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 the 2015 ozone and 2012 PM 2.5 NAAQS.

<sup>4</sup> <https://www2.illinois.gov/epa/topics/air-quality/outdoor-air/air-monitoring/Documents/2021%20Network%20Plan.pdf>.

a. PSD Provisions That Explicitly Identify NO<sub>x</sub> as a Precursor to Ozone in the PSD Program

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 29, 2005 (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 (see 70 FR at 71679, 71699–71704). This requirement was codified at 40 CFR 51.166.<sup>8</sup>

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including the provisions specific to NO<sub>x</sub> as a precursor to ozone, by June 15, 2007 (see 70 FR at 71683).

On September 9, 2021 (86 FR 50459), EPA approved 35 IAC Part 204 into Illinois' SIP to fully satisfy the requirements of CAA section 110(a)(2)(C) regarding NO<sub>x</sub> as a precursor to ozone. Specifically, 35 IAC 204.610(a)(2)(A) establishes NO<sub>x</sub> and VOM as precursors to ozone in all attainment and unclassifiable areas. EPA therefore finds that Illinois has met this set of infrastructure SIP requirements of CAA section 110(a)(2)(C) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

b. 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 (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 known as precursors. In the 2008 rule, EPA identified precursors to PM<sub>2.5</sub> for the PSD program to be 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 tons per year (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, May 16, 2008).<sup>9</sup>

The 2008 NSR Rule did not require states to immediately account for gases

<sup>9</sup>EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit 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. See *Nat. Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013). As the subpart 4 provisions apply only to nonattainment areas, 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, EPA's approval of Illinois' infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 NSR Rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 NSR 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 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.

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 due to EPA by May 16, 2011 (see 73 FR at 28341).

As previously mentioned, EPA approved 35 IAC Part 204 into the SIP on September 9, 2021 (86 FR 50459), to fully satisfy the requirements of CAA section 110(a)(2)(C) regarding identification of precursors to PM<sub>2.5</sub> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub> condensables. Specifically, 35 IAC 204.610(a)(2)(C)–(D) establishes SO<sub>2</sub> as a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas, NO<sub>x</sub> as a presumed precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas unless an EPA-approved demonstration of insignificant contribution is provided, and VOM not to be a precursor to PM<sub>2.5</sub> unless, similarly, an approved demonstration is provided. The provision at 35 IAC 204.610(a)(1) provides for the requirement of condensable PM to be included in applicability determinations and in establishing emission limitations for PM in PSD permits. EPA therefore finds that Illinois has met this set of infrastructure SIP requirements of CAA section 110(a)(2)(C) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

c. PM<sub>2.5</sub> Increments in the PSD Program

On October 20, 2010 (75 FR 64864), 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.

<sup>8</sup> Similar changes were codified in 40 CFR 52.21.

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

	Annual arithmetic mean	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 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).

As previously mentioned, EPA approved 35 IAC Part 204 into the SIP on September 9, 2021 (86 FR 50459), to fully satisfy the requirements of CAA section 110(a)(2)(C) regarding PM<sub>2.5</sub> increments. Specifically, 35 IAC 204.900 establishes ambient air increments by Class identical to the 2010 NSR Rule. EPA therefore finds that Illinois has met this set of infrastructure SIP requirements of CAA section 110(a)(2)(C) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

#### d. GHG Permitting and the “Tailoring Rule” in the PSD Program

With respect to the requirements of section 110(a)(2)(C) as well as section 110(a)(2)(J), EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating that the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. As discussed below, Illinois has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 134 S. Ct. 2427 (2014). The Supreme Court said that EPA may not treat GHGs as an air pollutant for

purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Court’s decision, on April 10, 2015, the U.S. Court of Appeals for the D.C. Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of EPA’s PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. *Coal. For Responsible Regul., Inc. v. EPA*, 606 F. App’x 6 (D.C. Cir. 2015). Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by EPA, the application of the BACT requirement to GHG emissions from Step 1 or “anyway” sources. With respect to Step 2 sources, the D.C. Circuit’s amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), “to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.”

EPA is planning to take additional steps to revise Federal PSD rules to address the Supreme Court’s opinion and subsequent D.C. Circuit’s ruling. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to EPA’s PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA’s planned actions to revise its PSD program rules in response to the court decisions. For purposes of infrastructure SIP submissions, EPA is only evaluating such submissions to assure that the State’s program addresses GHGs consistent with both court decisions.

At present, EPA has determined the Illinois SIP is sufficient to satisfy CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) with respect to GHGs. IEPA’s PSD permitting program

approved by EPA into the SIP on September 9, 2021 (86 FR 50459), contains provisions at 35 IAC 204.700 stating GHGs are subject to regulation. Additionally, 35 IAC 204.430 defines GHGs, 35 IAC 204.660 establishes significance thresholds, and 35 IAC Part 204, Subpart K establish Plantwide Applicability Limitations. Further, 35 IAC 204.490 and 204.510 specify that for major modifications and major stationary sources, significant net emission increase requirements apply to regulated NSR pollutants other than GHGs, and 35 IAC 204.1100 establishes requirements for major stationary sources and major modifications, including the application of BACT, for each regulated NSR pollutant. Hence, IEPA’s approved PSD program continues to require that PSD permits issued to “anyway sources” contain limitations on GHG emissions based on the application of BACT. EPA finds that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

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

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4).

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of CAA section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

##### 1. Significant Contribution to Nonattainment

EPA previously approved Illinois’ good neighbor provisions on June 20, 2019 (84 FR 28745), regarding PM<sub>2.5</sub>. Comments received were addressed in the referenced approval document. EPA

finds that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

Further, in this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

## 2. Interference With Maintenance

EPA previously approved Illinois' good neighbor provisions on June 20, 2019 (84 FR 28745), regarding PM<sub>2.5</sub>. EPA finds that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

Further, in this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

## 3. Interference With PSD

Illinois' satisfaction of the applicable infrastructure SIP PSD requirements has been detailed in the discussion of CAA section 110(a)(2)(C) above. The findings in that discussion related to PSD are consistent with the findings related to PSD for CAA section 110(a)(2)(D)(i)(II) stated below.

EPA previously disapproved revisions to Illinois' SIP to meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. *See* 77 FR 65478 (Oct. 29, 2012), 79 FR 62042 (Oct. 16, 2014). The proposed revisions had 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>, regulate condensable PM<sub>2.5</sub> and PM<sub>10</sub> in applicability determinations, regulate condensable PM<sub>2.5</sub> and PM<sub>10</sub> in applicability determinations for purposes of establishing emission limits, and 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>, as required by the 2010 NSR Rule. However, Illinois had no further obligations to EPA because federally promulgated rules, promulgated at 40 CFR 52.21 were in effect in the State. *See id.* As previously mentioned, EPA has approved a state PSD program in Illinois to satisfy the referenced requirements of the 2008 and 2010 NSR Rules (86 FR 50459, September 9, 2021). Therefore, EPA finds that Illinois' SIP contains provisions that adequately

address the infrastructure requirements for the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. This requirement can be satisfied through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Illinois' EPA-approved NNSR regulations are contained in 35 IAC Part 203 and are consistent with 40 CFR 51.165 (60 FR 27411, May 24, 1995). IEPA recently amended 35 IAC Part 203 to update the provisions in this regulation that refer to permits issued under 40 CFR 52.21 to refer to permits issued under 40 CFR 52.21 (IEPA's previous FIP for issuing PSD permits) or 35 IAC 204, Illinois' new regulation for a state PSD permitting program as previously mentioned. Therefore, EPA finds that Illinois has met all the applicable PSD requirements for the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

## 4. Interference With Visibility Protection

In this rulemaking, EPA is not approving or disapproving Illinois' satisfaction of the visibility protection requirements of section 110(a)(2)(D)(i)(II), transport prong 4, for the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS. Instead, EPA will evaluate Illinois' compliance with these requirements in a separate rulemaking.

## 5. Interstate and International Pollution Abatement

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.

Illinois has provisions in its recently SIP-approved PSD program in 35 IAC 252.201 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 CAA section 126(a). Illinois does not have obligations under any other subsection of CAA section 126, nor does it have any pending obligations under CAA section 115. Therefore, EPA finds that Illinois has met all applicable infrastructure SIP requirements of CAA section 110(a)(2)(D)(ii) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

## E. Section 110(a)(2)(E)—Adequate Resources; State Board Requirements

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.

### 1. Adequate Resources

To satisfy the adequate resources requirements of section 110(a)(2)(E), the state should provide assurances that its air agency has adequate resources, personnel, and legal authority to implement the relevant NAAQS. IEPA's Performance Partnership Agreement<sup>10</sup> with EPA provides IEPA's assurances of resources to carry out certain air programs. The provision at 415 ILCS 5/4 provides IEPA with the authority to develop rules and regulations necessary to meet ambient air quality standards. Additionally, the IPCB was created under 415 ILCS 5, providing the IPCB with the authority to develop rules and regulations necessary to promote the purposes of the Illinois Environmental Policy Act. The IPCB helps ensure compliance with required laws and other elements of the State's attainment plan that are necessary to attain the NAAQS, and to comply with the requirements of the CAA (415 ILCS 5/10). Further, as of fiscal year 2020, Illinois has satisfactorily completed its air program obligations as called for under the CAA section 105 grant, including meeting specific measures related to NSR program implementation and maintenance of an EPA-approved statewide air quality surveillance network required by section 110(a)(2)(B) of the CAA. IEPA states that it currently has nine full time construction permit engineers that perform construction permit activities, and that it has an adequate revenue stream from permit fees to support such activities. Therefore, EPA finds that Illinois has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E)

<sup>10</sup> <https://www2.illinois.gov/epa/about-us/Pages/performance-partnership-agreement.aspx>.

with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

## 2. State Board Requirements

Section 110(a)(2)(E) also requires each SIP to set forth provisions that comply with the state board requirements of section 128 of the CAA. Specifically, this section 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. Further, under section 128(a)(2), the head of the executive agency with the power to approve permits or enforcement orders must adequately disclose any potential conflicts of interest.

On January 25, 2018, IEPA submitted 35 IAC 101.112(d) for incorporation into the SIP, pursuant to section 128 of the CAA. This rule applies to the IPCB which has the authority to approve permits and enforcement orders. The language found in 35 IAC 101.112(d) is identical to the language in CAA section 128 and was approved into the SIP on September 23, 2019 (84 FR 50459). Therefore, EPA finds that Illinois has satisfied the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

## F. Section 110(a)(2)(F)—Stationary Source Monitoring System

Section 110(a)(2)(F) contains several requirements, each of which are described below.

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each SIP 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 the CAA. Lastly, the reports shall be available at reasonable times for public inspection.

IEPA requires regulated sources to submit various reports, dependent on

applicable requirements and the type of permit issued to the source. These reports are submitted to the BOA's Compliance Unit for review, and all reasonable efforts are made by IEPA to maximize the effectiveness of available resources to review the required reports (415 ILCS 5/4, 5 and 10). EPA finds that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

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

Section 110(a)(2)(G) requires the SIP to provide for an emergency powers authority analogous to that in section 303 of the CAA, and adequate contingency plans to implement such authority. EPA's 2013 Guidance states that infrastructure SIP submissions should specify authority, vested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

Illinois has the necessary authority to address emergency episodes, and these provisions are contained in 415 ILCS 5/34. The provision at 415 ILCS 5/43(a) authorizes the IEPA to request a State's attorney from Illinois Attorney General's office to seek immediate injunctive relief in circumstances of substantial danger to the environment or to the public health of persons. EPA finds that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2012 PM<sub>2.5</sub> and 2015 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, to the availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

As previously mentioned, 415 ILCS 5/4 and 415 ILCS 5/10 provide the Director of IEPA, in conjunction with IPCB, with the authority to develop rules and regulations necessary to meet ambient air quality standards. Furthermore, they have the authority to respond to any EPA findings of inadequacy with the Illinois SIP program. EPA finds that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

## I. Section 110(a)(2)(I)—Nonattainment Planning Requirements of 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 will take action on Illinois' part D attainment plans through separate processes.

## J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notification; PSD; Visibility Protection

The evaluation of the submission from Illinois with respect to the requirements of section 110(a)(2)(J) are described below.

### 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.

IEPA is required to give notice to the Office of the Attorney General and the Illinois Department of Natural Resources during the rulemaking process per 35 IAC Part 102. Furthermore, Illinois provides notice to reasonably anticipated stakeholders and interested parties, as well as to any FLM, if the rulemaking applies to Federal land which the FLM has authority over. Additionally, IEPA participates in the Lake Michigan Air Director's Consortium (LADCO), which consists of collaboration with EPA and the States of Indiana, Michigan, Minnesota, Ohio, and Wisconsin. IEPA also consults with Missouri through a process established in a Memorandum of Agreement. EPA finds that Illinois has satisfied the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

### 2. Public Notification

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. IEPA continues to collaborate with the Cook County Department of Environmental Control. This consists of continued and routine monitoring of air quality throughout the state and notifying the public when unhealthy air quality is measured or forecasted. IEPA actively populates EPA's AIRNOW program and distributes the information to interested

stakeholders such as Partners for Clean Air in Chicago, the Clean Air Partnership in St. Louis, and the Cook County Department of Environmental Control. The State maintains portions of its website specifically for air quality alerts,<sup>11</sup> and prepares annual data reports from its complete monitoring network and provides a daily air quality index to the public and media. Therefore, EPA finds that Illinois has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

### 3. PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Illinois' PSD program in the context of infrastructure SIPs has already been discussed above in the paragraphs addressing section 110(a)(2)(C) and section 110(a)(2)(D)(i)(II), and EPA notes that the findings for those sections are consistent with the findings for this portion of section 110(a)(2)(J). Therefore, EPA finds that Illinois has met all the infrastructure SIP requirements for PSD associated with section 110(a)(2)(J) for the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

### 4. 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. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

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

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

IEPA maintains the capability and authority to perform modeling of the air quality impacts of emissions of all criteria pollutants, including the capability to use complex photochemical grid models per 415

ILCS 5/4. This modeling is used in support of the SIP for all nonattainment areas in the state. IEPA also requires air quality modeling in support of permitting the construction of major and some minor new sources under the PSD program. These modeling data are available to EPA as well as the public upon request. Lastly, IEPA participates in LADCO, which conducts regional modeling that is used for statewide planning purposes. EPA finds that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2012 PM<sub>2.5</sub> and 2015 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.

IEPA implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62946), and the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits are contained in 415 ILCS 5/39.5. As previously mentioned, IEPA states that it currently has nine full time construction permit engineers that perform construction permit activities, and that it has an adequate revenue stream from permit fees to support such activities. Further, IEPA has increased BOA staffing and appropriation from 2019 to 2020, with projected increases continuing through 2021. EPA finds that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(L) with respect to the 2012 PM<sub>2.5</sub> and 2015 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.

All public participation procedures pertaining to IEPA are consistent with 35 IAC Part 164 (Procedures for Informational and Quasi-Legislative Public Hearings) and 35 IAC Part 252 (Public Participation in the Air Pollution Control Permit Program); the latter is an approved portion of Illinois' SIP. See 50 FR 38803 (June 1, 1984) and 86 FR 21207 (April 22, 2021). EPA finds that Illinois has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.

## III. Applicability of PSD Requirements

As previously mentioned, IEPA submitted to EPA a request on

September 22, 2020, to revise the Illinois SIP to establish a SIP-approved PSD program in Illinois, replacing the previous FIP. IEPA requested that EPA incorporate into the SIP Title 35 IAC Part 204 containing the new PSD program, and revisions to 35 IAC Parts 252 and 203. The request was approved on September 9, 2021 (86 FR 50459), and addressed comments received during EPA's public comment period.

While this action primarily addresses the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS, EPA is approving several elements for the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 ozone, 2008 lead, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. Specifically, EPA is approving elements 110(a)(2)(C), (D) and (J) pertaining to PSD requirements. For 110(a)(2)(C), IEPA's new PSD program addresses: (i) PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone in the PSD program; (ii) 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; (iii) PM<sub>2.5</sub> increments in the PSD program; and (iv) GHG permitting and the "Tailoring Rule" in the PSD program. IEPA's new PSD program also addresses the requirements under 110(a)(2)(D) to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program as well as meeting requirements relating to interstate and international pollution abatement. EPA notes that the findings for sections (C) and (D) are consistent with the findings for this portion of section 110(a)(2)(J). IEPA's satisfaction of these elements is discussed in the appropriate sections above. Because EPA is acting on the Illinois' submittal for a minimal quantity of the 110(a)(2) infrastructure elements for the referenced NAAQS, these elements are not included in the table in the following section, but are contained in the codification of this action. EPA finds that Illinois has met the infrastructure SIP requirements of sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) pertaining to PSD requirements with respect to the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 ozone, 2008 lead, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

## IV. What action is EPA taking?

EPA is approving most elements of a submission from IEPA certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS.<sup>12</sup> The

<sup>12</sup> EPA emphasizes that the recently approved PSD provisions discussed in 110(a)(2)(C), (D) and (J) are not limited to ozone and PM<sub>2.5</sub>. See

<sup>11</sup> <https://www.epa.state.il.us/air/air-quality-menu.html>.

table below summarizes EPA's actions on Illinois' submittal in satisfaction of the infrastructure SIP requirements pursuant to section 110(a)(2).

Additionally, EPA is approving Illinois' submission as meeting the infrastructure SIP requirements of sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J)

pertaining to PSD requirements with respect to the 1997 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 ozone, 2008 lead, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

Element	2012 PM <sub>2.5</sub>	2015 Ozone
(A)—Emission limits and other control measures .....	A	A
(B)—Ambient air quality monitoring/data system .....	A	A
(C)1—Program for enforcement of control measures .....	A	A
(C)2—Minor NSR .....	A	A
(C)3—PSD .....	A	A
(D)1—I Prong 1: Interstate transport—significant contribution to nonattainment .....	PA	NA
(D)2—I Prong 2: Interstate transport—interference with maintenance .....	PA	NA
(D)3—II Prong 3: Interstate transport—interference with PSD .....	A	A
(D)4—II Prong 4: Interstate transport—interference with visibility protection .....	NA	NA
(D)5—Interstate and international pollution abatement .....	A	A
(E)1—Adequate resources .....	A	A
(E)2—State board requirements .....	A	A
(F)—Stationary source monitoring system .....	A	A
(G)—Emergency powers .....	A	A
(H)—Future SIP revisions .....	A	A
(I)—Nonattainment planning requirements of part D .....	*	*
(J)1—Consultation with government officials .....	A	A
(J)2—Public notification .....	A	A
(J)3—PSD .....	A	A
(J)4—Visibility protection .....	*	*
(K)—Air quality modeling/data .....	A	A
(L)—Permitting fees .....	A	A
(M)—Consultation/participation by affected local entities .....	A	A

In the above table, the key is as follows:

A	Approve
NA .....	No Action/Separate Rulemaking.
PA .....	Previously Approved.
D .....	Disapprove.
* .....	Not germane to infrastructure SIPs.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective November 29, 2021 without further notice unless we receive relevant adverse written comments by October 29, 2021. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse

comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective November 29, 2021.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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).

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 November 29, 2021. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 22, 2021.

**Cheryl Newton,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 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 § 52.720, the table in paragraph (e) is amended under the heading “Section 110(a)(2) Infrastructure Requirements” by revising the entries for “1997 8-hour Ozone NAAQS Infrastructure Requirements”, “1997 PM<sub>2.5</sub> NAAQS Infrastructure Requirements”, “2006 24-hour PM<sub>2.5</sub> NAAQS Infrastructure Requirements”, “2008 Lead NAAQS Infrastructure Requirements”, “2008 Ozone NAAQS Infrastructure Requirements”, “2010 NO<sub>2</sub> NAAQS Infrastructure Requirements”, “2010 SO<sub>2</sub> NAAQS Infrastructure Requirements”, and “2012 PM<sub>2.5</sub> NAAQS Infrastructure Requirements” and adding an entry for “2015 Ozone NAAQS Infrastructure Requirements” at the end of the table to read as follows:

#### § 52.720 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

### EPA-APPROVED ILLINOIS NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
<b>Section 110(a)(2) Infrastructure Requirements</b>				
1997 8-hour Ozone NAAQS Infrastructure Requirements.	Statewide .....	12/12/2007 and 9/22/2020	9/29/2021, [INSERT <b>Federal Register</b> CITATION].	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(i)(I) [Prongs 1 and 2]. A FIP is in place for these elements.
1997 PM <sub>2.5</sub> NAAQS Infrastructure Requirements.	Statewide .....	12/12/2007 and 9/22/2020	9/29/2021, [INSERT <b>Federal Register</b> CITATION].	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(i)(I) [Prongs 1 and 2]. A FIP is in place for these elements.
2006 24-hour PM <sub>2.5</sub> NAAQS Infrastructure Requirements.	Statewide .....	8/9/2011, supplemented on 8/25/2011, 6/27/2012, 7/5/2017 and 9/22/2020.	9/29/2021, [INSERT <b>Federal Register</b> CITATION].	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(i)(I) [Prongs 1 and 2]. A FIP is in place for these elements.
2008 Lead NAAQS Infrastructure Requirements.	Statewide .....	12/31/2012, 7/5/2017 and 9/22/2020.	9/29/2021, [INSERT <b>Federal Register</b> CITATION].	All CAA infrastructure elements under 110(a)(2) have been approved.
2008 Ozone NAAQS Infrastructure Requirements.	Statewide .....	12/31/2012, 7/5/2017 and 9/22/2020.	9/29/2021, [INSERT <b>Federal Register</b> CITATION].	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(i)(I) [Prongs 1 and 2]. A FIP is in place for these elements.
2010 NO <sub>2</sub> NAAQS Infrastructure Requirements.	Statewide .....	12/31/2012, 7/5/2017 and 9/22/2020.	9/29/2021, [INSERT <b>Federal Register</b> CITATION].	All CAA infrastructure elements under 110(a)(2) have been approved.

## EPA-APPROVED ILLINOIS NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
2010 SO <sub>2</sub> NAAQS Infrastructure Requirements.	Statewide .....	12/31/2012, 7/5/2017 and 9/22/2020.	9/29/2021, [INSERT Federal Register CITATION].	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(i)(I) [Prongs 1 and 2], which have not yet been submitted.
2012 PM <sub>2.5</sub> NAAQS Infrastructure Requirements.	Statewide .....	9/29/2017 and 9/22/2020	9/29/2021, [INSERT Federal Register CITATION].	All CAA infrastructure elements under 110(a)(2) have been approved.
2015 Ozone NAAQS Infrastructure Requirements.	Statewide .....	5/16/2019 and 9/22/2020	9/29/2021, [INSERT Federal Register CITATION].	All CAA infrastructure elements under 110(a)(2) have been approved except (D)(i)(I) Prongs 1, 2 and (D)(i)(II) Prong 4. No action has been taken on those elements.

[FR Doc. 2021–21027 Filed 9–28–21; 8:45 am]

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**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 225 and 252****[Docket DARS–2021–0019]****RIN 0750–AL46****Defense Federal Acquisition Regulation Supplement: Department of State Rescission of Determination Regarding Sudan (DFARS Case 2021–D027)****AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the December 14, 2020, rescission by the Department of State of the designation of Sudan as a state sponsor of terrorism.

**DATES:** Effective September 29, 2021.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kimberly Bass, telephone 703–372–6174.

**SUPPLEMENTARY INFORMATION:****I. Background**

This final rule implements the rescission by the Department of State of the designation of Sudan as a state sponsor of terrorism and the Department of State Public Notice: 11281, Rescission of Determination Regarding Sudan, announcing the removal of Sudan from the U.S. list of state sponsors of terrorism, effective December 14, 2020. The Department of State's action was

based on the Presidential Report of October 26, 2020, to Congress, indicating the Administration's intent to rescind the designation of Sudan as a state sponsor of terrorism, including the certification that Sudan has not provided any support for international terrorism during the previous six months and that Sudan has provided assurance that it will not support acts of international terrorism in the future.

The Department of State's rescission also satisfies the provisions of section 620A(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(c)), section 40(f) of the Arms Export Control Act (22 U.S.C. 2780(f)), and, to the extent applicable, section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) and continued in effect by Executive Order (E.O.) 13222, as amended by E.O. 13637 of March 8, 2013.

Consistent with the December 14, 2020, action, Sudan is removed from the list of countries that are state sponsors of terrorism.

**II. Publication of This Final Rule for Public Comment Is Not Required by Statute**

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only removes

Sudan from the list of countries that fall within the DFARS definition of "state sponsor of terrorism," consistent with the December 14, 2020, rescission of the designation by the Secretary of State.

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule amends the solicitation provision at DFARS 252.225–7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, and the contract clause at DFARS 252.225–7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services. The rule only removes Sudan from the list of countries in the DFARS definition of "state sponsor of terrorism," consistent with the December 14, 2020, rescission of the designation by the Secretary of State. This rule does not change the applicability of the affected solicitation provision, which is included in solicitations and contracts that exceed \$150,000 for commercial items (other than commercial satellite services), including commercially available off-the-shelf items; and the affected contract clause, which is included in solicitations and contracts for the acquisition of commercial satellite services, including solicitations and contracts for commercial items.

**IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the