

should be submitted to the docket, as described above, by June 27, 2011. The CASAC consultation on these planning documents is scheduled for May 19–20, 2011. A separate **Federal Register** notice will provide details about this meeting and the process for participation.

Dated: April 25, 2011.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–10340 Filed 4–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1179; FRL–9299–8]

Approval and Promulgation of Air Quality Implementation Plans; Infrastructure SIP Requirements for 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve some elements and conditionally approve other elements of certifications submitted by Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin regarding the infrastructure requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 eight-hour ground level ozone national ambient air quality standards (1997 ozone NAAQS) and 1997 fine particle national ambient air quality standards (1997 PM_{2.5} NAAQS). The requirements are designed to ensure that the components of each State's air quality management program are adequate to meet the State's responsibilities under the CAA.

DATES: Comments must be received on or before May 31, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–1179, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* mooney.john@epa.gov.
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency,

77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID EPA–R05–OAR–2007–1179. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m.,

Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886–0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, chang.andy@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

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

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these submittals?

A. What State submittals does this rulemaking address?

This rulemaking addresses State submittals from each State (and appropriate State agency) in EPA Region 5: Illinois Environmental Protection Agency (Illinois EPA); Indiana Department of Environmental Management (IDEM); Michigan Department of Environmental Quality (MDEQ); Minnesota Pollution Control Agency (MPCA); Ohio Environmental Protection Agency (Ohio EPA); and Wisconsin Department of Natural Resources Bureau of Air Management (WDNR). Each State made submittals on the following dates: Illinois—December 12, 2007; Indiana—December 7, 2007, and supplemented on September 19, 2008, March 23, 2011, and April 7, 2011; Michigan—December 6, 2007, and supplemented on September 19, 2008 and April 6, 2011; Minnesota—November 29, 2007; Ohio—December 5, 2007, and supplemented on April 7, 2011; and, Wisconsin—December 12, 2007, and supplemented on January 24, 2011 and March 28, 2011.

B. Why did the States make these submittals?

Under sections 110(a)(1) and (2) of the CAA, and implementing EPA policy, the States were required to submit either revisions to their State Implementation Plans (SIPs) that provide for implementation, maintenance, and enforcement of the 1997 standards, or certifications that their existing SIPs for ozone and particulate matter already met those requirements. In accordance with an October 2, 2007 “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards” (1997 Infrastructure

Memo), the submittals meeting the requirements were to be submitted to EPA within three years after promulgation of the revised standards. As the guidance acknowledged, July 16, 2000 was the initial due date; however, intervening litigation over the 1997 ozone and 1997 PM_{2.5} NAAQS created uncertainty about how States were to proceed.¹ In subsequent consent decrees with Earth Justice, EPA agreed to make official findings on whether the States had made SIP submissions to satisfy the CAA requirements by specified dates. SIPs intended to satisfy the infrastructure elements for the 1997 ozone NAAQS were due on December 15, 2007; SIPs intended to satisfy the infrastructure elements for the 1997 PM_{2.5} NAAQS were due on October 15, 2008. The certifications referenced in this rulemaking pertain to the requirements of sections 110(a)(1) and (2) of the CAA. The six State submittals being evaluated here address both ozone and PM_{2.5}, and the proposed rulemaking addresses both pollutants as well.

III. What criteria is EPA using to judge these submittals?

EPA discussed the applicable review criteria in the 1997 Infrastructure Memo. Specifically, Attachment A of this memorandum (Required Section 110 SIP Elements) identified criteria for the States to meet in order to satisfy these sections of the CAA. On September 25, 2009, EPA issued an updated guidance document pertaining to the 2006 PM_{2.5} NAAQS entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)” (2006 Infrastructure Memo), which clarifies expectations for certain elements to meet the requirements of sections 110(a)(1) and (2) of the CAA under the new NAAQS. Where possible and appropriate, EPA will reference the guidance contained in the 2006 Infrastructure Memo as it pertains to the States’ submittals.

In this proposed rulemaking, EPA is not acting on portions of section 110(a)(2)(C)—Program for enforcement of control measures; section 110(a)(2)(D)—Interstate transport; and section 110(a)(2)(J)—Consultation with government officials, public notifications, prevention of significant deterioration, and visibility protection. In addition, EPA is not acting on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. The rationale for not acting on

elements of these requirements is discussed below.

IV. What did EPA find from its review of these submittals?

The six States in Region 5 have certified that they meet the applicable requirements of sections 110(a)(1) and 110(a)(2) without further revisions to their respective SIPs. Therefore, consistent with the 2006 Infrastructure Memo, no public hearing process was necessary at the State level. Nevertheless, EPA believes that the public will have the opportunity to review each certification through our notice-and-comment rulemaking process. Illinois EPA, IDEM, MDEQ, MPCA, Ohio EPA, and WDNR provided detailed synopses of how various components of their respective air quality management programs meet each of the requirements in section 110(a)(2). The following review evaluates the six States’ submittals.

A. Section 110(a)(2)(A)—Emission limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Section 110(a)(2)(A) does not require that States submit regulations or emissions limits specifically for attaining either the 1997 ozone or PM_{2.5} NAAQS. Those regulations are due as part of each State’s attainment demonstration, and will be addressed separately from the requirements of section 110(a)(2)(A).

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 the Director of Illinois EPA 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, and has the authority to develop rules and regulations necessary to promote the purposes of the Illinois Environmental Protection Act. Furthermore, 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 concludes that Illinois has met the requirements of section 110(a)(2)(A) with respect to the 1997 ozone and PM_{2.5} NAAQS.

¹ See, e.g., *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457 (2001).

IDEM's authority to adopt emissions standards and compliance schedules is found at Indiana Code (IC) 13-14-8, IC 13-17-3-4, IC 13-17-3-11, and IC 13-17-3-14. EPA concludes that Indiana has met the requirements of section 110(a)(2)(A) with respect to the 1997 ozone and PM_{2.5} NAAQS.

The Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), sections 324.5503 and 324.5512, provide the Director of MDEQ the authority to regulate the discharge of air pollutants, and to promulgate rules to establish standards for emissions for ambient air quality and for emissions. EPA concludes that Michigan has met the requirements of section 110(a)(2)(A) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Minnesota Statute chapter 116.07 gives MPCA the authority to "[a]dopt, amend, and rescind rules and standards having the force of law relating to any purpose * * * for the prevention, abatement, or control of air pollution." EPA concludes that Minnesota has met the requirements of section 110(a)(2)(A) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Ohio Revised Code (ORC) 3704.03 provides the Director of Ohio EPA with the authority to develop rules and regulations necessary to meet State and Federal ambient air quality standards. EPA concludes that Ohio has met the requirements of section 110(a)(2)(A) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Wisconsin Statutes (WS) chapter 285.11 through WS chapter 285.19 establishes general authority for monitoring, updating, and implementing necessary revisions to the Wisconsin SIP. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(A) with respect to the 1997 ozone and PM_{2.5} NAAQS.

A number of States have provisions regarding excess emissions during startup, shutdown, or malfunction (SSM) which are contrary to the CAA and existing EPA guidance, including a September 20, 1999 memorandum entitled, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunction, Startup, and Shutdown." As a result, in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities. EPA plans to address such State regulations in the future. In the meantime, EPA encourages any State having a deficient SSM provision to take steps to correct it as soon as possible.

In the same manner, EPA is not proposing to approve or disapprove any existing State rules with regard to so-called "Director's discretion" or variance provisions. EPA believes that a number of States have such provisions which are contrary to the CAA existing EPA guidance (52 FR 45109) issued on November 24, 1987. EPA plans to take action in the future to address such State regulations. In the meantime, EPA encourages any State having a Director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

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

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. EPA has determined that in order to meet the requirements of section 110(a)(2)(B), each State should: Submit an annual monitoring plan for the relevant NAAQS, and have this plan approved by EPA; monitor air quality for the relevant pollutant at appropriate locations throughout the State using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; submit data to EPA's Air Quality System (AQS) in a timely manner; and, provide EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

Illinois EPA continues to operate an extensive monitoring network incorporating more than 300 monitors throughout the State. Illinois EPA also publishes an annual report that summarizes air quality trends. Furthermore, Illinois EPA submits yearly monitoring network plans to EPA, and the 2011 Annual Air Monitoring Network Plan was approved by EPA on October 29, 2010. Monitoring data from Illinois EPA is 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. EPA concludes that Illinois has met the requirements of section 110(a)(2)(B) with respect to the 1997 ozone and PM_{2.5} NAAQS.

IDEM continues to operate an air monitoring network; the State's 2011 Annual Air Monitoring Network Plan was approved by EPA on October 29, 2010. Monitoring data from IDEM 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. EPA concludes that Indiana has met the requirements of section 110(a)(2)(B) with respect to the 1997 ozone and PM_{2.5} NAAQS.

MDEQ maintains a comprehensive network of air quality monitors throughout Michigan. MDEQ's 2011 Annual Air Monitoring Network Plan was approved by EPA on October 29, 2010. MDEQ enters air monitoring data into AQS, and the State provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA concludes that Michigan has met the requirements of section 110(a)(2)(B) with respect to the 1997 ozone and PM_{2.5} NAAQS.

MPCA continues to operate an ambient pollutant monitoring network, and compiles and reports air quality data to EPA. MPCA's 2011 Annual Air Monitoring Network Plan was approved by EPA on October 29, 2010. MPCA also provides prior notification to EPA when changes to its monitoring network or plan are being considered. EPA concludes that Minnesota has met the requirements of section 110(a)(2)(B) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Ohio EPA continues to operate a monitoring network; the State's 2011 Annual Air Monitoring Network Plan was approved by EPA on December 2, 2010. Furthermore, Ohio EPA populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA concludes that Ohio has met the requirements of section 110(a)(2)(B) with respect to the 1997 ozone and PM_{2.5} NAAQS.

WDNR continues to operate an extensive monitoring network; the State's 2011 Annual Air Monitoring Network Plan was approved by EPA on December 21, 2010. WDNR enters air quality data into AQS in a timely manner, and gives EPA prior notification when considering a change to its monitoring network or plan. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(B) with respect to the 1997 ozone and PM_{2.5} NAAQS.

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

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under the prevention of significant deterioration (PSD) and nonattainment new source review (NNSR) programs. Part C of the

CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of the Region 5 States' certifications addressing the requirements of section 110(a)(2)(C) covers: Enforcement of SIP measures; oxides of nitrogen (NO_x) as a precursor to ozone in the PSD program; PM₁₀² as a surrogate for PM_{2.5} in the PSD program; NSR Reform; Greenhouse gas (GHG) permitting and the "tailoring rule"; and, minor NSR regulations.

Sub-Element 1: Enforcement of SIP Measures

Illinois continues to staff and implement an enforcement program comprised, and operated by, the Compliance Section and Division of Legal Counsel. 415 ILCS 5/4 provides the Director of Illinois EPA with the authority to implement and administer this enforcement program. Furthermore, Illinois EPA has confirmed that all enforcement actions are brought by the Office of the Illinois Attorney General or local State's Attorney offices, with whom Illinois EPA consults. EPA concludes that Illinois has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

IDEM maintains an enforcement program to ensure compliance with SIP requirements. IC 13–14–1–12 provides the Commissioner with the authority to enforce rules "consistent with the purpose of the air pollution control laws." Additionally, IC 13–14–2–7 and IC 13–17–3–3 provide the Commissioner with the authority to assess civil penalties and obtain compliance with any applicable rule a board has adopted in order to enforce air pollution control laws. Lastly, IC 13–14–10–2 allows for an emergency restraining order that prevents any person from causing, or introducing contaminants, that cause or contribute to air pollution. EPA concludes that Indiana has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

MDEQ continues to staff and implement an enforcement program to assure compliance with all requirements under State law, consistent with the provisions of Act 451. Additionally, this air quality enforcement unit provides support and technical assistance to

Michigan's Attorney General on all air pollution enforcement issues referred by MDEQ's Air Quality Division for escalated enforcement action. Lastly, the air quality enforcement unit at MDEQ coordinates formal administrative actions such as contested case hearings, administrative complaints, and revocation of permits to install. Therefore, EPA concludes that Michigan has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Minnesota Statute chapter 116.07 gives the MPCA the authority to enforce any provisions of the chapter relating to air contamination. These provisions include: entering into orders; schedules of compliance; stipulation agreements; requiring owners or operators of emissions facilities to install and operate monitoring equipment; and conducting investigations. EPA concludes that Minnesota has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Ohio EPA continues to staff and implement an enforcement program. ORC 3704.03 provides the Director of Ohio EPA with the authority to continue to implement the enforcement program as well as the updated NSR provisions within Ohio Administrative Code (OAC) 3745–31. Ohio EPA compiles all air pollution control enforcement settlements in the State, and makes them available for public review on its Web site. EPA concludes that Ohio has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

WDNR maintains an enforcement program to ensure compliance with SIP requirements. The Bureau of Air Management houses an active Statewide Compliance and Enforcement Team that works in all geographic regions of the State. WDNR refers most actions to the Wisconsin Department of Justice with the strong involvement of WDNR. Under WS chapter 285.13, the agency has the authority to impose fees and penalties to ensure that required measures are ultimately implemented. EPA concludes that Wisconsin has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Sub-Element 2: NO_x as a Precursor to Ozone in the PSD Program

Each State's PSD program must include NO_x as a precursor to ozone in order for this sub-element to be approvable. This requirement was

contained in the November 29, 2005 final rule to implement the 1997 8-hour ozone NAAQS (see 70 FR 71699), and codified at 40 CFR 52.21. Furthermore, EPA has determined that the analyses of each State's PSD program must be holistic; if a State lacks provisions needed to address NO_x as a precursor to ozone, the provisions of section 110(a) requiring a suitable permitting program must be considered not to be met irrespective of the pollutant being addressed.

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules include provisions establishing NO_x as a precursor to ozone. While EPA acknowledges that the States have not satisfied the requirement for a SIP submittal, they have no further obligations because EPA believes that the plans for Illinois and Minnesota, specifically including the Federally promulgated PSD regulations, meet this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Indiana's PSD regulations were conditionally approved by EPA on March 3, 2003 (68 FR 9892), and fully approved on May 20, 2004 (69 FR 29071). These regulations contain provisions establishing NO_x as a precursor to ozone. Therefore, EPA concludes that Indiana has met this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Michigan's PSD regulations were conditionally approved by EPA on September 16, 2008 (73 FR 53366), and fully approved by EPA on March 25, 2010 (75 FR 14352). These regulations contain provisions establishing NO_x as a precursor to ozone. Therefore, EPA concludes that Michigan has met this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

EPA conditionally approved Ohio EPA's PSD regulations on October 10, 2001 (66 FR 51570), and fully approved by EPA on January 22, 2003 (68 FR 2909). These regulations contain provisions establishing NO_x as a precursor to ozone. Therefore, EPA concludes that Ohio has met this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

EPA approved Wisconsin's PSD rules on May 27, 1999 (64 FR 28745). These

² PM₁₀ refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as "coarse" particles. Coarse particles are frequently the result from crushing or grinding operations, and can come from dust on paved or unpaved roads as well.

regulations contain provisions establishing NO_x as a precursor to ozone. Therefore, EPA finds that Wisconsin has met this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Sub-Element 3: PM₁₀ as a Surrogate for PM_{2.5} in the PSD Program

On October 23, 1997, EPA issued a policy allowing PM₁₀ emissions to be used as a surrogate for PM_{2.5} emissions in the PSD program. This policy was issued by the Director of the Office of Air Quality Planning and Standards, and entitled, "Interim Implementation of New Source Review for PM_{2.5}." At that time, EPA's justification for using PM₁₀ as a surrogate for PM_{2.5} was that permitting authorities were not able to accurately calculate emissions of PM_{2.5} and related precursors or to predict PM_{2.5} ambient air quality impacts from projects. 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_{2.5})," which ended the PM₁₀ surrogate policy, and confirmed that States wanting to submit PSD program regulations for EPA approval would need to evaluate PM_{2.5} emissions rather than PM₁₀. The deadline for States to submit revised PSD regulations addressing PM_{2.5} emissions is May 16, 2011; in the interim, States may still use the PM₁₀ surrogate policy. Furthermore, EPA has determined that the evaluation of the PSD program must be holistic; if States do not submit amendments that evaluate direct PM_{2.5} emissions by May 16, 2011, EPA would consider the PSD requirements under section 110(a) unmet, irrespective of the pollutant for which EPA is evaluating the satisfaction of section 110(a).

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules require that States evaluate PM_{2.5} emissions in the PSD program. While EPA acknowledges that the States have not satisfied the requirement for a SIP submittal, they have no further obligations because EPA believes that the plans for Illinois and Minnesota, specifically including the Federally promulgated PSD regulations, meet this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Indiana, Ohio, and Michigan do not currently have the evaluation of PM_{2.5} emissions adopted into their respective State regulations. The May 16, 2011 deadline for submitting revisions to their respective SIPs addressing the direct evaluation of PM_{2.5} and its precursors may pass prior to final action of these infrastructure SIPs. As a result, EPA has determined that so long as States provide a formal commitment to submit the requisite PM_{2.5} revisions for SIP approval not later than one year after final action of these infrastructure SIPs, we can propose a conditional approval for Indiana, Ohio, Michigan, and Wisconsin with respect to this set of requirements of section 110(a)(2)(C).

EPA received formal commitments from IDEM (March 23, 2011), Ohio EPA (April 7, 2011), and MDEQ (April 6, 2011) affirming that each State will submit revisions to the SIP incorporating the direct evaluation of PM_{2.5} and its precursors within one year of our final action of these infrastructure SIPs. Therefore, EPA proposes to conditionally approve the plans for Indiana, Ohio, and Michigan addressing this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

If, however, Indiana, Ohio and Michigan do not submit revisions to their respective SIPs incorporating the direct evaluation of PM_{2.5} and its precursors within one year of final action on these infrastructure SIPs, the conditional approval will automatically revert to disapproval with respect to this set of requirements of section 110(a)(2)(C) for the 1997 ozone and PM_{2.5} NAAQS.

In a March 28, 2011 letter from Wisconsin's Director of the Bureau of Air Management, WDNR informed EPA that current State rules provide for NSR permitting for PM_{2.5} without the use of the PM₁₀ surrogate policy. EPA therefore concludes that Wisconsin has met this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Sub-Element 4: NSR Reform

In this action, EPA is not proposing to approve or disapprove any State rules with regard to NSR reform requirements (see 67 FR 80186). EPA has acted on NSR reform submittals from Region 5 States through earlier separate rulemakings.³ For the purpose of this action, "NSR reform" applies to major NSR only.

³ <http://www.epa.gov/reg5oair/permits/const/frn-nsr.html>.

Sub-Element 5: GHG Permitting and the "Tailoring Rule"

On June 3, 2010, EPA issued a final rule establishing a "common sense" approach to addressing GHG emissions from stationary sources under the CAA permitting programs. The "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," or "tailoring rule," set thresholds for GHG emissions that define when permits under the NSR PSD and title V operating permit programs are required for new and existing industrial facilities (75 FR 31514). The tailoring rule set the GHG PSD applicability threshold at 75,000 tons per year (tpy) as expressed in carbon dioxide equivalent; if States have not adopted this threshold, sources with GHG emissions above 100 tpy or 250 tpy (depending on source category) would be subject to PSD, effective January 2, 2011. The lower thresholds could potentially result in apartment complexes, strip malls, small farms, restaurants, *etc.* triggering GHG PSD requirements.

On December 23, 2010, EPA issued a subsequent series of rules that put the necessary framework in place to ensure that industrial facilities can get CAA permits covering their GHG emissions when needed, and that facilities emitting GHGs at levels below those established in the tailoring rule do not need to obtain CAA permits.⁴ Included in this series of rules was EPA's issuance of the "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans," referred to as the PSD SIP "narrowing rule" on December 30, 2010 (75 FR 82536). The narrowing rule limits, or "narrows," EPA's previous approval of PSD programs that were previously approved into SIPs; the programs in question are those that apply PSD to sources that emit GHG. Specifically, the effect of the narrowing rule is that provisions that are no longer approved—*e.g.*, portions of already approved SIPs that apply PSD to GHG emissions increases from sources emitting GHG below the tailoring rule thresholds—now have the status of having been submitted by the State but not yet acted upon by EPA. In other words, the narrowing rule focuses on eliminating the PSD obligations under Federal law for sources below the tailoring rule thresholds.

EPA has found that the six Region 5 States and their respective PSD programs fall into three distinct categories: States that have not adopted

⁴ <http://www.epa.gov/NSR/actions.html#2010>.

or submitted any regulations for PSD; States that have a previously approved PSD program that predates both the tailoring rule and the narrowing rule; and, a State that has submitted certifications of PSD program with GHG permitting applicability consistent with the tailoring rule thresholds. Each Region 5 State's status with respect to its GHG PSD program, as well as EPA's proposed actions, is discussed below.

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules contain the threshold as outlined in the tailoring rule. While EPA acknowledges that the States have not satisfied the requirement for a SIP submittal, they have no further obligations because EPA believes that the plans for Illinois and Minnesota, specifically including the Federally promulgated PSD regulations, meet this set of requirements of section 110(a)(2)(C) and (E)⁵ with respect to the 1997 ozone and PM_{2.5} NAAQS.

The States of Indiana, Ohio, and Wisconsin have the legal authority under their approved PSD SIPs to regulate GHGs as part of their PSD permitting programs. In the PSD SIP narrowing rule, EPA narrowed its previous approval of these States' PSD programs to ensure that the Federally approved PSD programs in these three States only require PSD permitting of sources emitting GHG at or above the thresholds established in the tailoring rule.

As noted above, EPA received the infrastructure SIP submittals from these three States in December 2007, before EPA identified GHG as a regulated pollutant and before EPA promulgated the Tailoring Rule. On April 7, 2011, Indiana and Ohio transmitted letters clarifying to EPA that their respective submissions, currently before EPA for our review, include only those parts of their PSD SIPs that remain approved after the PSD SIP Narrowing Rule. Wisconsin transmitted a similar letter on March 28, 2011. Thus, the GHG PSD permitting requirements included in these three States' infrastructure SIP submittals consist of only those portions of their PSD SIP programs that apply

PSD permitting requirements to GHG emissions at or above tailoring rule thresholds. Therefore, EPA concludes that the GHG PSD permitting program in Indiana, Ohio, and Wisconsin have met this set of requirements of sections 110(a)(2)(C) and (E) for both the 1997 ozone and PM_{2.5} NAAQS.

On July 27, 2010, Michigan informed EPA that the State has both the legal and regulatory authority, as well as the resources, to permit GHG under its SIP-approved PSD permitting program, consistent with the thresholds laid out in the tailoring rule.⁶ Therefore, EPA concludes that Michigan's GHG PSD permitting program has met this set of requirements requirements of sections 110(a)(2)(C) and (E) for both the 1997 ozone and PM_{2.5} NAAQS.

Sub-Element 6: Minor NSR Regulations

EPA has provided States with a broad degree of discretion in implementing their programs for review of minor new sources (minor NSR), as reflected in the less detailed regulations for minor NSR outlined in 40 CFR 51.160 to 40 CFR 51.164.

EPA previously approved each Region 5 State's minor NSR program into the SIP, including provisions that adequately address the emissions of PM_{2.5}. EPA approvals for each State's minor NSR program occurred on: Illinois—May 31, 1972 (37 FR 10862); Indiana—October 7, 1994 (59 FR 51108); Michigan—May 6, 1980 (45 FR 29790); Minnesota—May 24, 1995 (60 FR 27411); Ohio—January 22, 2003 (68 FR 2909); and, Wisconsin—February 17, 1995 (60 FR 3543). Since the date of each approval, each Region 5 State and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 1997 ozone and PM_{2.5} NAAQS. In this action, EPA concludes that Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin have met this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} NAAQS.

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

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

Section 110(a)(2)(D)(i) requires SIPs to include provisions prohibiting any

source or other type of emissions activity in one State from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another State. Furthermore, this section requires SIPs to include provisions prohibiting any source or other type of emissions activity in one State from interfering with measures required to prevent significant deterioration of air quality or to address regional haze.

EPA is not acting on any of the requirements of section 110(a)(2)(D)(i). The requirements that States have provisions prohibiting any source or other type of emissions activity in that State from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another State are being addressed by a new rule pertaining to interstate transport which EPA proposed on August 2, 2010, entitled the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule).⁷ PSD requirements have been addressed in the analysis of section 110(a)(2)(C), and visibility requirements will be addressed in the analysis of section 110(a)(2)(J). Again, in the context of section 110(a)(2)(D)(i), EPA is not taking action on the requirements for PSD and visibility protection.

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and 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.

While Illinois and Minnesota have not adopted or submitted regulations for PSD, Federally promulgated rules for this purpose are in effect in each of the States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules contain provisions requiring new or

⁵ Section 110(a)(2)(E) requires that States have the resources to administer an air quality management program. Some States that are not covered by the narrowing rule may not be able to adequately demonstrate that they have adequate personnel to issue GHG permits to all sources that emit GHG under the tailoring rule thresholds.

⁶ Letter from the Director of MDEQ to EPA Region 5 Regional Administrator dated July 27, 2010.

⁷ See "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

modified sources to notify neighboring States of potential negative air quality impacts. While EPA acknowledges that the States have not satisfied the requirements of a SIP submittal, they have no further obligations because EPA believes that the plans from Illinois and Minnesota, specifically including the Federally promulgated PSD regulations, meet this set of requirements of section 110(a)(2)(D) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Indiana, Michigan, Ohio, and Wisconsin have provisions in their respective EPA-approved PSD programs requiring new or modified sources to notify neighboring States of potential negative air quality impacts. EPA concludes that Indiana, Michigan, Ohio, and Wisconsin have met the requirements of section 126(a) with respect to the 1997 ozone and PM_{2.5} NAAQS.

None of the Region 5 States have pending obligations under any other section of section 126, nor do any of the Region 5 States have any obligations under section 115. Therefore, EPA finds that all States in Region 5 have met the requirements of section 110(a)(2)(D)(ii) with respect to the 1997 ozone and PM_{2.5} NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each State to provide for adequate personnel, funding, and legal authority under State law to carry out its SIP, and related issues.

Illinois Public Act 95–0348, Article 215 provides appropriations for the Illinois EPA Bureau of Air Programs and associated personnel. As discussed in previous sections, Illinois EPA has affirmed that 415 ILCS 5/4 and 415 ILCS 5/10 provide the Director, in conjunction with IPCB, with the authority to develop rules and regulations necessary to meet ambient air quality standards and respond to any EPA findings of inadequacy with the Illinois SIP program. Lastly, IPCB ensures compliance with required laws or elements of the State's attainment plan that are necessary to attain the NAAQS, or that are necessary to comply with the requirements of the CAA. EPA concludes that Illinois has met the requirements of section 110(a)(2)(E) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Indiana's biennial budget sets funding and personnel levels for IDEM every two years. As discussed in earlier sections, IC 13–14–1–12 provides the Commissioner of IDEM with the authority to enforce air pollution control laws. Furthermore, IC 13–14–8, IC 13–

17–3–11, and IC 13–17–3–14 contain the authority for IDEM to adopt air emissions standards and compliance schedules. EPA concludes that Indiana has met the requirements of section 110(a)(2)(E) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Michigan's budget ensures that EPA grant funds as well as State funding appropriations are sufficient to administer its air quality management program, and MDEQ has routinely demonstrated that it retains adequate personnel to carry out the duties of this program. Furthermore, Act 451 provides the legal authority under State law to carry out the Michigan SIP. EPA concludes that Michigan has met the requirements of section 110(a)(2)(E) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Although MPCA did not expressly address this section, EPA recognizes that the State's budget has been, and is, adequate for administering its air quality management program. MPCA has routinely demonstrated that it retains adequate personnel to carry out the duties of this program. EPA also notes that Minnesota Statute chapter 116.07 provides the legal authority under State law to carry out the SIP. EPA concludes that Minnesota has met the requirements of section 110(a)(2)(E) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Ohio EPA has included its biennial budget with its submittal, which details the funding sources and program priorities addressing the required SIP programs. Ohio EPA has routinely demonstrated that it retains adequate personnel to administer its air quality management program. As discussed in previous sections, ORC 3704.03 provides the legal authority under State law to carry out the SIP. EPA concludes that Ohio has met the requirements of section 110(a)(2)(E) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Wisconsin's biennial budget ensures that EPA grant funds as well as State funding appropriations are sufficient to administer its air quality management program, and WDNR has routinely demonstrated that it retains adequate personnel to administer its air quality management program. As discussed in previous sections, basic duties and authorities in the State are outlined in WS chapter 285.11. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(E) with respect to the 1997 ozone and PM_{2.5} NAAQS.

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

more resources than any Region 5 State appears to have. This is not a concern in Illinois and Minnesota, because PSD permitting for GHGs is based on Federally promulgated PSD rules that “tailor” the applicability to 75,000 tons per year (expressed as carbon dioxide equivalent).

Given the effect of EPA's narrowing rule to provide that approved SIPs for Indiana, Ohio, and Wisconsin do not involve permitting GHG sources smaller than the tailoring rule thresholds, EPA concludes that these States also have the resources necessary to implement the requirements of their respective SIPs.

As previously discussed, Michigan's PSD regulations provide the State with adequate resources to permit GHG consistent with the tailoring rule thresholds; therefore, EPA concludes that Michigan retains all the resources necessary to implement the requirements of its SIP.

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

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The State plan shall also require period reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each State agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Illinois EPA 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 Bureau of Air's Compliance Unit for review, and all reasonable efforts are made by Illinois EPA to maximize the effectiveness of available resources to review the required reports. EPA concludes that Illinois has satisfied the requirements of section 110(a)(2)(F) with respect to the 1997 ozone and PM_{2.5} NAAQS.

The Indiana State rules for monitoring requirements are contained in 326 Indiana Administrative Code (IAC) 3. Additional emissions reporting requirements are found in 326 IAC 2–6. EPA concludes that Indiana has satisfied the requirements of section 110(a)(2)(F) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Michigan Administrative Code (MAC) R336.2001 to R336.2004 provide requirements for performance testing and sampling. MAC R336.2101 to R336.2199 provide requirements for continuous emission monitoring, and MAC R336.201 and R336.202 require annual reporting of emissions. EPA concludes that Michigan has met the requirements of section 110(a)(2)(F) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Under Minnesota State air quality rules, any NAAQS is an applicable requirement for stationary sources. Minnesota's monitoring rules have been previously approved by EPA and are contained in Chapter 7011 of Minnesota's SIP. EPA concludes that Minnesota has met the requirements of section 110(a)(2)(F) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Ohio EPA district offices and local air agencies are currently required to witness 50% of all source testing and review 100% of all tests. EPA recognizes that Ohio has routinely submitted quality assured analyses and data for publication. Furthermore, requirements for continuous emissions monitoring under 40 CFR part 51, Appendix P are contained in OAC 3745–17–03(c). EPA concludes that Ohio has met the requirements of section 110(a)(2)(F) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Wisconsin DNR requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued, to the Bureau of Air Management Compliance Team. The frequency and requirements for report review are incorporated as part of Wisconsin Administrative Code NR 438 and Wisconsin Administrative Code NR 439. Additionally, WDNR routinely submits quality assured analyses and data obtained from its stationary source monitoring system for review and publication. EPA concludes Wisconsin has met the requirements of section 110(a)(2)(F) with respect to the 1997 ozone and PM_{2.5} NAAQS.

G. Section 110(a)(2)(G)—Emergency Power

EPA is currently in the process of promulgating new guidance providing values that we would recommend for defining emergency episodes for PM_{2.5}. Subsequent to the December 2007 submittals, EPA has provided guidance regarding PM_{2.5} emergency episode planning. This guidance was provided in Attachment B of a memorandum dated September 25, 2009, from the Director of the Air Quality Policy Division to the Regional Air Division Directors. In accordance with this

guidance, EPA believes that where a State can demonstrate that PM_{2.5} levels have consistently remained below 140.4 micrograms per cubic meter (μg/m³), provided the State has appropriate general emergency powers to address PM_{2.5} related episodes, the State may satisfy section 110(a)(2)(G) without necessarily providing for specific emergency episode plans or contingency measures for PM_{2.5}.

On January 11, 2011, Illinois EPA confirmed that all monitored values of PM_{2.5} have been well below 140.4 μg/m³ at all sites in Illinois, and therefore Illinois is not specifically required to submit an emergency episode plan and contingency measures for PM_{2.5} at this time. Illinois also has the necessary general authority to address emergency episodes. EPA concludes that Illinois has met the requirements of section 110(a)(2)(G) with respect to the 1997 PM_{2.5} NAAQS.

On January 11, 2011, IDEM confirmed that all monitored values of PM_{2.5} have been well below 140.4 μg/m³ at all sites in Indiana since 1999, and therefore Indiana is not specifically required to submit an emergency episode plan and contingency measures for PM_{2.5} at this time. Several statutory provisions in the Indiana Code and the Indiana Administrative Code provide the proper mechanisms to address air pollution emergency episodes. EPA concludes that Indiana has met the requirements of section 110(a)(2)(G) with respect to the 1997 PM_{2.5} NAAQS.

On January 11, 2011, MPCA observed that all monitored values of PM_{2.5} have been well below 140.4 μg/m³ at all sites in Minnesota since 2006, with the highest recorded value since then being 57.5 μg/m³. Therefore, Minnesota is not specifically required to submit an emergency episode plan and contingency measures for PM_{2.5} at this time. Chapter 7009 of the Minnesota SIP contains the provisions necessary for determining air quality emergency episodes. EPA concludes that Minnesota has met the requirements of section 110(a)(2)(G) with respect to the 1997 PM_{2.5} NAAQS.

On January 24, 2011, MDEQ confirmed that all reliable monitored PM_{2.5} values in Michigan have been well below 140.4 μg/m³. MDEQ did cite elevated readings in 2007 at a site operated by the Intertribal Council (ITC). Although the data has not been removed by ITC, EPA staff completed an analysis on March 30, 2011, attesting that the data from the ITC site was reported to AQS without supporting quality assurance measures. Therefore, EPA believes that the data collected at this site is of unknown quality, and

should be considered invalid and unusable, especially for regulatory purposes. Since no reliable observations in Michigan exceed 140.4 μg/m³, EPA has determined that Michigan is not specifically required to submit an emergency episode plan and contingency measures for PM_{2.5} at this time. Additionally, EPA is working with ITC to either invalidate or delete the invalid data from AQS. Michigan R 324.5518 of Act 451 provides MDEQ with the authority to require the immediate discontinuation of air contaminant discharges that constitute an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment. Furthermore, R 324.5530 of Act 451 provides for civil action by the Michigan Attorney General for violations described in R 324.5518. EPA concludes that Michigan has met the requirements of section 110(a)(2)(G) with respect to the 1997 PM_{2.5} NAAQS.

On January 11, 2011, Ohio EPA confirmed that all monitored values of PM_{2.5} have been well below 140.4 μg/m³ at all sites in Ohio, and therefore Ohio is not specifically required to submit an emergency episode plan and contingency measures for PM_{2.5} at this time. OAC 3745–25 provides the requirement to implement emergency action plans in the event of an Air Quality Alert or higher. EPA concludes that Ohio has met the requirements of section 110(a)(2)(G) with respect to the 1997 PM_{2.5} NAAQS.

On January 24, 2011, WDNR confirmed that all monitored values of PM_{2.5} have been well below 140.4 μg/m³ at all sites in Wisconsin, and therefore Wisconsin is not specifically required to submit an emergency episode plan and contingency measures for PM_{2.5} at this time. WS chapter 285.85 provides the requirement for WDNR to act upon a finding that episode or emergency conditions exist. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(G) with respect to the 1997 PM_{2.5} NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires States to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

As previously mentioned, 415 ILCS 5/4 and 415 ILCS 5/10 provide the Director of Illinois EPA, 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 concludes that Illinois has met the requirements of section 110(a)(2)(H) with respect to the 1997 ozone and PM_{2.5} NAAQS.

IDEM continues to update and implement needed revisions to Indiana's SIP as necessary to meet ambient air quality standards. As discussed in previous sections, authority to adopt emissions standards and compliance schedules is found at IC 13-4-8, IC 13-17-3-4, IC 13-17-3-11, and IC 13-17-3-14. EPA concludes that Indiana has met the requirements of section 110(a)(2)(H) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Michigan Act 451 provides the authority to: promulgate rules to establish standards for ambient air quality and emissions; issue, deny, revoke, or reissue permits; make findings of fact and determinations; make, modify, or cancel orders that require the control of air pollution and/or permits rules and regulations necessary to meet NAAQS; and prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for control or prevention of any new air pollution. EPA concludes that Michigan has met the requirements of section 110(a)(2)(H) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Minnesota Statute chapter 116.07 grants the agency the authority to "[a]dopt, amend, and rescind rules and standards having the force of law relating to any purpose * * * for the prevention, abatement, or control of air pollution." EPA concludes that Minnesota has met the requirements of section 110(a)(2)(H) with respect to the 1997 ozone and PM_{2.5} NAAQS.

ORC 3704.03 provides the Director of Ohio EPA with the authority to develop rules and regulations necessary to meet ambient air quality standards. EPA concludes that Ohio has met the requirements of section 110(a)(2)(H) with respect to the 1997 ozone and PM_{2.5} NAAQS.

WS chapter 285.11(6) provides WDNR with the authority to develop all rules, limits, and regulations necessary to meet the NAAQS as they evolve, and to respond to any EPA findings of inadequacy with the overall Wisconsin SIP and air management programs. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(H) with respect to the 1997 ozone and PM_{2.5} NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; Prevention of Significant Deterioration; Visibility Protection

The evaluation of the Region 5 States' certifications addressing the requirements of section 110(a)(2)(J) are described below.

Sub-Element 1: Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements. All States in EPA Region 5 consult with appropriate governments, stakeholders, and FLM in their planning efforts.

Illinois EPA is required to give notice to the Office of the Attorney General and the Illinois Department of Natural Resources during the rulemaking process. 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, Illinois EPA participates in the Lake Michigan Air Director's Consortium (LADCO), which consists of collaboration with the States of Indiana, Wisconsin, Michigan, and Ohio. Lastly, Illinois EPA participates in the Regional Haze Planning Process through its membership in the Midwest Regional Planning Organization. EPA concludes that Illinois has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.

IDEM actively participates in the regional planning efforts that include State rule developers, representatives from the FLMs, and other affected stakeholders. Additionally, Indiana is an active member of LADCO. EPA concludes that Indiana has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.

MDEQ actively participates in planning efforts that include

stakeholders from local governments, the business community, and community activist groups. MDEQ also routinely involves FLMs and Tribal groups in Michigan SIP development. Michigan is also an active member of LADCO. Therefore, EPA concludes that Michigan has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.

MPCA actively participates in the Central Regional Air Planning Association as well as the Central States Air Resource Agencies. MPCA has also demonstrated that it frequently consults and discusses issues with pertinent Tribes. Therefore, EPA concludes that Minnesota has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Ohio EPA actively participates in the regional planning efforts that include both the State rule developers as well as representatives from the FLMs and other affected stakeholders. The FLMs are also included in Ohio EPA's interested party lists which provide announcements of draft and proposed rule packages. Additionally, Ohio is an active member of LADCO. Therefore, EPA concludes that Ohio has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.

WS chapter 285.13(5) contains the provisions for WDNR to advise, consult, contract, and cooperate with other agencies of the State and local governments, industries, other States, interstate or inter-local agencies, the Federal government, and interested persons or groups during the entire process of SIP revision development and implementation and for other elements regarding air management for which the agency is the officially charged agency. WDNR's Bureau of Air Management has effectively used formal stakeholder structures in the development and refinement of all SIP revisions. Additionally, Wisconsin is an active member of LADCO. EPA concludes that Wisconsin has satisfied the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Sub-Element 2: Public Notification

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

Illinois EPA 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. Illinois EPA provides air quality data to EPA's AIRNOW program, and also provides the daily air quality index (AQI) to the media. Additionally, Illinois EPA provides the AQI to local stakeholder groups including Partners for Clean Air in Chicago and the Clean Air Partnership in St. Louis. Lastly, air quality data, as well as measures that can be taken to prevent exceedances, are made available on Illinois EPA's Web site. EPA concludes that Illinois has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.

IDEM monitors air quality data daily, and reports the AQI to the interested public and media if necessary. IDEM also participates and submits information to EPA's AIRNOW program, and maintains SmogWatch, which is an informational tool created by IDEM to share air quality forecasts for each day. SmogWatch provides daily information about ground-level ozone, particulate matter concentration levels, health information, and monitoring data for seven regions in Indiana. EPA concludes that Indiana has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.

MDEQ actively participates in programs such as Ozone Action, AIRNOW, and EnviroFlash. Additionally, MDEQ posts current air quality concentrations on the its Web pages, and prepares an annual air quality report. EPA concludes that Michigan has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Minnesota consistently notifies the public when exceedances occur, participates in the AIRNOW program, and dedicates portions of the MPCA Web site to enhancing public awareness of measures that can be taken to prevent exceedances. EPA concludes that Minnesota has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Ohio EPA's district offices and local air agencies monitor air quality daily, and where required, report the daily AQI to the interested media. In addition, Ohio EPA's remote access of data system provides online reports of real time air quality data on the Internet and feeds raw information to EPA's AIRNOW program. Furthermore, Ohio EPA actively involves local stakeholder groups in the AIRNOW forecast program. EPA concludes that Ohio has

met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.

In addition to maintaining an active monitoring network for multiple criteria pollutants (with NAAQS), WDNR also routinely forecasts air quality when elevated pollutant concentrations are noted. Public notice is provided at levels associated with the extent of the monitored problems ranging from a simple advisory to alert levels. Wisconsin also participates in the AIRNOW program, and dedicates portions of the WDNR Web site to enhancing public awareness of measures that can be taken to prevent exceedances. EPA concludes that Wisconsin has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Sub-Element 3: Prevention of Significant Deterioration

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. All six States in Region 5 have stated their commitment to addressing both long-term requirements to meet natural visibility levels by 2064 as well as concurrent review of new major sources and major modifications under each State's approved PSD new source review program. Each State's PSD program has already been discussed in the paragraphs addressing section 110(a)(2)(C), and will not be addressed in this section.

Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary PM_{2.5} NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C.

Michigan, Minnesota, Indiana, and Ohio have submitted such plans to EPA on November 5, 2010, December 30, 2009, January 14, 2011, and March 11, 2011, respectively. EPA expects the other Region 5 States to submit their plans in the coming months. EPA will conduct separate rulemakings on regional haze plans as the States submit them; these rulemakings will address

each State's satisfaction of the visibility portion of section 110(a)(2)(J). EPA is neither proposing to approve, nor disapprove, the regional haze requirements of section 110(a)(2)(J) for any of the Region 5 States in today's action.

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

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

Illinois EPA maintains the capability to perform modeling of the air quality impacts of emissions of all criteria pollutants, including the capability to use complex photochemical grid models. This modeling is used in support of the SIP for all nonattainment areas in the State. Illinois EPA 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, Illinois EPA participates in LADCO, which conducts regional modeling that is used for statewide planning purposes. EPA concludes that Illinois EPA has met the requirements of section 110(a)(2)(K) with respect to the 1997 ozone and PM_{2.5} NAAQS.

IDEM continues to review the potential impact of major and some minor new sources using computer models. Indiana's rules regarding air quality modeling are contained in 326 IAC 2-2-4, 326 IAC 2-2-5, 326 IAC 2-2-6, and 326 IAC 2-2-7. These modeling data are available to EPA or other interested parties upon request. EPA concludes that Indiana has met the requirements of section 110(a)(2)(K) with respect to the 1997 ozone and PM_{2.5} NAAQS.

MDEQ reviews the potential impact of major and some minor new sources, consistent with 40 CFR part 51, Appendix W, "Guidelines on Air Quality Models." These modeling data are available to EPA upon request. EPA concludes that Michigan has met the requirements of section 110(a)(2)(K) with respect to the 1997 ozone and PM_{2.5} NAAQS.

MPCA reviews the potential impact of major and some minor new sources. Applicable major sources in Minnesota are required to perform modeling to show that emissions do not cause or contribute to a violation of any NAAQS. Furthermore, MPCA maintains the capability to perform its own modeling. EPA concludes that Minnesota has met the requirements of section 110(a)(2)(K)

with respect to the 1997 ozone and PM_{2.5} NAAQS.

Ohio EPA reviews the potential impact of major and some minor new sources, consistent with 40 CFR part 51, Appendix W, "Guidelines on Air Quality Models," as well as Ohio EPA Engineering Guide 69. These modeling data are available to EPA upon request. EPA concludes that Ohio has met the requirements of section 110(a)(2)(K) with respect to the 1997 ozone and PM_{2.5} NAAQS.

WDNR maintains the capability to perform computer modeling of the air quality impacts of emissions of all criteria pollutants, including both source-oriented and more regionally directed complex photochemical grid models. WDNR collaborates with LADCO, EPA, and other Lake Michigan States in order to perform modeling. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(K) with respect to the 1997 ozone and PM_{2.5} 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.

Illinois EPA implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62946); therefore, EPA concludes that Illinois has met the requirements of section 110(a)(2)(L).

IDEM implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62969); revisions to program were approved on August 13, 2002 (67 FR 52615). EPA concludes that Indiana has met the requirements of section 110(a)(2)(L).

MDEQ implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62949); revisions to the program were approved on November 10, 2003 (68 FR 63735). EPA concludes that Michigan has met the requirements of section 110(a)(2)(L).

MPCA implements and operates the title V permit program, which EPA

approved on December 4, 2001 (66 FR 62967); therefore, EPA concludes that Minnesota has met the requirements of section 110(a)(2)(L).

Ohio EPA implements and operates the title V permit program, which EPA approved on August 15, 1995 (60 FR 42045); revisions to the program were approved on November 20, 2003 (68 FR 65401). EPA concludes that Ohio has met the requirements of section 110(a)(2)(L).

Wisconsin DNR implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62951); revisions to the program were approved on February 28, 2006 (71 FR 9934). EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(L).

EPA concludes that all Region 5 States have met the requirements of section 110(a)(2)(L) with respect to the 1997 ozone and 1997 PM_{2.5} 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 Illinois EPA are consistent with 35 Illinois Administrative Code Part 164 and Part 252. Part 252 is an approved portion of Illinois' SIP. EPA concludes that Illinois has met the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Any IDEM rulemaking procedure contained in IC 13-14-9 requires public participation in the SIP development process. In addition, IDEM ensures that the requirements of 40 CFR 51.102 are satisfied during the SIP development process. EPA concludes that Indiana has met the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and PM_{2.5} NAAQS.

In Michigan, memoranda of understanding regarding consultation or participation in the SIP development process have been entered between MDEQ and local political subdivisions. MDEQ also provides opportunity for stakeholder workgroup participation in rule development processes. EPA

concludes that Michigan has met the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Minnesota regularly consults with local political subdivisions affected by the SIP, where applicable. EPA observes that Minnesota Statute chapter 116.05 authorizes cooperation and agreement between MPCA and other State and local governments. Additionally, the Minnesota Administrative Procedures Act (Minnesota Statute chapter 14) provides general notice and comment procedures that are followed during SIP development. Lastly, MPCA regularly issues public notices on proposed actions. EPA concludes that Minnesota has met the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and PM_{2.5} NAAQS.

Ohio EPA follows approved procedures for allowing public participation, consistent with OAC 3745-47, which is part of the approved SIP. EPA concludes that Ohio has met the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and PM_{2.5} NAAQS.

In addition to the measures outlined in the paragraph addressing WDNR's submittal regarding consultation requirements of section 110(a)(2)(J), as contained in WS chapter 285.13(5), the State follows a formal public hearing process in the development and adoption of all SIP revisions that entail new or revised control programs or strategies and targets. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and PM_{2.5} NAAQS.

V. What action is EPA taking?

EPA is proposing to approve some elements and conditionally approve other elements of submissions from the EPA Region 5 States certifying that the current SIPs are sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 1997 8-hour ground-level ozone NAAQS and PM_{2.5} NAAQS.

Specifically, these are EPA's proposed actions, by element of section 110(a)(2):

Element	IL	IN	OH	MI	MN	WI
A: Emission limits and other control measures	A	A	A	A	A	A
B: Ambient air quality monitoring and data system	A	A	A	A	A	A
C1: Enforcement of SIP measures	A	A	A	A	A	A
C2: NO _x as a precursor to ozone in PSD regulations	*	A	A	A	*	A
C3: PM ₁₀ surrogate policy in PSD regulations	*	CA	CA	CA	*	A
C4: NSR reform	NA	NA	NA	NA	NA	NA
C5: GHG permitting in PSD regulations	*	A	A	A	*	A
C6: Minor NSR regulations	A	A	A	A	A	A
D(i): Interstate transport	NA	NA	NA	NA	NA	NA
D(ii): Interstate and international pollution abatement	A	A	A	A	A	A

Element	IL	IN	OH	MI	MN	WI
E: Adequate resources	A	A	A	A	A	A
F: Stationary source monitoring system	A	A	A	A	A	A
G: Emergency power	A	A	A	A	A	A
H: Future SIP revisions	A	A	A	A	A	A
I: Nonattainment area plan or plan revisions under part D	NA	NA	NA	NA	NA	NA
J1: Consultation with government officials	A	A	A	A	A	A
J2: Public notification	A	A	A	A	A	A
J3: PSD	**	**	**	**	**	**
J4: Visibility protection (Regional Haze)	NA	NA	NA	NA	NA	NA
K: Air quality modeling and data	A	A	A	A	A	A
L: Permitting fees	A	A	A	A	A	A
M: Consultation and participation by affected local entities	A	A	A	A	A	A

In the above table, the key is as follows:

A	Approve.
CA	Conditionally Approve.
NA	No Action/Separate Rulemaking.
*	Federally promulgated rules in place.
**	Previously discussed in element (C).

VI. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

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

Dated: April 19, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011-10331 Filed 4-27-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA-HQ-OAR-2009-0234; EPA-HQ-OAR-2011-0044, FRL-9300-1]

RIN 2060-AP52

National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Notice of public hearings.

SUMMARY: EPA published in the **Federal Register** on May 3, 2011, the proposed rule "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units." EPA is announcing three public hearings to be held for the proposed rule.

DATES: The public hearings will be held on May 24, 2011, and May 26, 2011.

ADDRESSES: Public hearings will be held on May 24, 2011, in Chicago, IL, and Philadelphia, PA. The Chicago, IL, hearing will be held at the Crowne Plaza Chicago Metro in Ballroom D located at 733 West Madison Street, Chicago, IL 60611; *Telephone:* (312) 829-5000. The Philadelphia, PA, hearing will be held at the Westin Philadelphia in the Georgian Room located at 99 South 17th Street at Liberty Place, Philadelphia, PA 19103; *Telephone:* (888) 627-8153. The May 26, 2011, hearing will be held in the EPA Region IV offices at the Sam Nunn Atlanta Federal Center (AFC)