appropriate operational changes needed to expeditiously to prevent any future violation of the NAAQS. Explicit measures addressed in Florida's April 3, 2015, SIP submittal are:

- Fuel switching to reduce or eliminate the use of sulfur-containing fuels;
- combustion air system enhancement;
- vent gas scrubber enhancement;
- white liquor scrubber enhancement; and/or
- physical or operational reduction of production capacity.

Florida may consider other options for additional controls if these measures are not deemed to be the most appropriate to address air quality issues in the Area.

Florida would implement the most appropriate control strategy to address the exceedances. If a permit modification might be required to conform to applicable air quality standards, Florida will make use of the State's authority in Rule 62–4.080, F.A.C. to require permittees to comply with new or additional conditions. This authority would allow Florida to work directly with the source(s) expeditiously to make changes to permits. Subsequently, Florida would submit any relevant permit change to EPA as a source-specific SIP revision to make the change permanent and enforceable. EPA recognizes this strategy as an acceptable additional step, but according to CAA section 172(c)(9), a measure requiring further action by FL DEP or EPA (*e.g.,* necessitating a revised permit and SIP revision) could not serve as the primary contingency measure.

EPA is proposing to find that Florida's April 3, 2015, SIP submittal includes a comprehensive program to expeditiously identify the source of any violation of the SO_2 NAAQS and for aggressive follow-up. Therefore, EPA proposes that the contingency measures submitted by Florida follow the 2014 SO_2 Nonattainment Guidance and meet the section 172(c)(9) . EPA notes that Florida has further committed to pursue additional actions that may require a SIP revision if needed to address the exceedances.

G. Attainment Date

Florida's modeling indicates that the Nassau Area will begin attaining the 2010 SO_2 NAAQS by January 1, 2018, once the control strategy is completely implemented. This modeling does not provide for an attaining three-year design value by the proposed attainment date of October 4, 2018. However, expeditious implementation of RACM/RACT for the Rayonier source, coupled with actual emissions from the WestRock source, has already provided for an attaining design value of 58 ppb considering 2013–2015 data, and in fact exhibited attaining data since 2011–2013 with a design value of 70 ppb.[25] The recent design value is well under the NAAQS, and the ongoing compliance schedule for WestRock control measures will help to assure that the area maintains the NAAQS in the future. Therefore, the area is expected to attain the NAAQS by the attainment date.

V. Proposed Action

EPA is proposing to approve Florida's SO_2 attainment plan for the Nassau Area. EPA has preliminarily determined that the SIP meets the applicable requirements of the CAA. Specifically, EPA is proposing to approve Florida's April 3, 2015, SIP submission, which includes the base year emissions inventory, a modeling demonstration of SO_2 attainment, an analysis of RACM/RACT, a RFP plan, and contingency measures for the Nassau Area. Additionally, EPA is proposing to approve into the Florida SIP specific SO_2 emission limits and compliance parameters established for the two SO_2 point sources impacting the Nassau Area.

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 Act and applicable federal regulations. *See* 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 proposed 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 proposed 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: August 15, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–20119 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

[25] The most recent quality-assured design values for each NAAQS are publicly available at *https://www.epa.gov/air-trends/air-quality-design-values.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0425; FRL–9951–15–Region 4]

Air Plan Approval; GA; Infrastructure Requirements for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the State of Georgia, through the Georgia Department of Natural Resources (DNR), Environmental Protection Division (EPD), on December 14, 2015, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. EPD certified that the Georgia SIP contains provisions to ensure the 2012 Annual $PM_{2.5}$ NAAQS is implemented, enforced, and maintained in Georgia. EPA is proposing to determine that portions of Georgia's infrastructure submission, submitted to EPA on December 14, 2015, satisfy certain required infrastructure elements for the 2012 Annual $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before September 22, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0425 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bell can be reached via telephone at (404) 562–9088 or via electronic mail at *bell.tiereny@epa.gov.*

I. Background and Overview

On December 14, 2012 (78 FR 3086, January 15, 2013), EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter (μg/m^3) to 12.0 μg/m^3. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2012 Annual $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015.[1]

This rulemaking is proposing to approve portions of Georgia's $PM_{2.5}$ infrastructure SIP submissions[2] for the applicable requirements of the 2012 Annual $PM_{2.5}$ NAAQS, with the exception of the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), for which EPA is not proposing any action in this rulemaking regarding these requirements. For the aspects of Georgia's submittal proposed for approval in this rulemaking, EPA notes that the Agency is not approving any specific rule, but rather proposing that Georgia's already approved SIP meets certain CAA requirements.

[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term ''State rules'' or ''State regulations'' indicate that the cited regulation has been approved into Georgia's federally-approved SIP. The term ''Georgia Air Quality Act'' indicates cited Georgia State statutes, which are not a part of the SIP unless otherwise indicated.

[2] Georgia's 2012 Annual $PM_{2.5}$ NAAQS infrastructure SIP submission dated December 14, 2015, is referred to as ''Georgia's $PM_{2.5}$ infrastructure SIP'' in this action.

II. What elements are required under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned previously, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements are summarized later on in this preamble and in EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).'' [3]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources [4]

[3] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[4] This rulemaking only addresses requirements for this element as they relate to attainment areas.

- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas [5]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

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

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[6] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[7] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[8] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[9] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various

[5] As mentioned previously, this element is not relevant to this proposed rulemaking.

[6] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[7] See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[8] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[9] See, *e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

elements and sub-elements of the same infrastructure SIP submission.[10]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[11]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and is thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[12] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[13] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[14] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHGs). By

[10] For example, on December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007, submittal.

[11] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[12] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[13] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[14] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations. On March 17, 2016, EPA released a memorandum titled, ''Information on the Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' to provide guidance to states for interstate transport requirements specific to the $PM_{2.5}$ NAAQS.

contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[15] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[18]

IV. What is EPA's analysis of how Georgia addressed the elements of sections 110(a)(1) and (2) ''infrastructure'' provisions?

The Georgia 2012 Annual $PM_{2.5}$ infrastructure submission addresses the

[15] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[16] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[17] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] See, *e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Georgia's SIP are relevant to air quality control regulations. The following State regulations include enforceable emission limitations and other control measures: 391–3–1–.01, ''Definitions. Amended.'', 391–3–1–.02, ''Provisions. Amended.'', and 391–3–1–.03, ''Permits. Amended.'' These regulations collectively establish enforceable emissions limitations and other control measures, means or techniques for activities that contribute to $PM_{2.5}$ concentrations in the ambient air, and provide authority for EPD to establish such limits and measures as well as schedules for compliance through SIP-approved permits to meet the applicable requirements of the CAA. EPA has made the preliminary determination that the provisions contained in these State rules are adequate to satisfy section 110(a)(2)(A) for the 2012 Annual $PM_{2.5}$ NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[19]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency 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.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) Monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. Georgia's authority to monitor ambient air quality is found in the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–6(b)(13)). Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan, and includes a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[20] On June 15, 2015, EPA received Georgia's plan for FY 2016. On October 13, 2015, EPA approved Georgia's monitoring network plan. Georgia's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0425. This State statute, along with Georgia's Ambient Air Monitoring Network Plan, provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. EPD states that no specific statutory or regulatory authority is necessary for EPD to authorize data analysis or the submission of such data to EPA, or to provide data submissions in response to federal regulations. EPA has made the preliminary determination that Georgia's SIP and practices are adequate for the ambient air quality monitoring and data system requirements related to the 2012 Annual $PM_{2.5}$ NAAQS.

3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program).

Enforcement: Georgia's Enforcement Program covers mobile and stationary sources, consumer products, and fuels. The enforcement requirements are met through two Georgia Rules for Air Quality: 391–3–1–.07—''Inspections and Investigations. Amended.'' and 391–3–1–.09—''Enforcement. Amended.'' Georgia also cites to enforcement authority found in Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–13) in its submittal. Collectively, these regulations and State statute provide for enforcement of $PM_{2.5}$ emission limits and control measures.

PSD Permitting for Major Sources: EPA interprets the PSD sub-element to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the structural PSD requirements for all regulated NSR pollutants. A state's PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all structural PSD requirements that are due under the EPA regulations or the CAA on or before the date of the EPA's proposed action on the infrastructure SIP submission. The following Georgia Rules for Air Quality collectively establish a preconstruction, new source permitting program in the State that meets the PSD requirements of the CAA for $PM_{2.5}$ emissions sources: 391–3–1–.02.—''Provisions. Amended,'' which includes PSD requirements under 391–3–1–.02(7), and 391–3–1–.03.—''Permits. Amended,'' which includes NNSR requirements under 391–3–l–.03(8)(c) and (g). Georgia's infrastructure SIP demonstrates that new major sources and major modifications in areas of the State designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements.[21]

[19] On June 12, 2015, EPA published a final action entitled, ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction.'' *See* 80 FR 33840.

[20] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

[21] For more information on the structural PSD program requirements that are relevant to EPA's review of infrastructure SIPs in connection with the current PSD-related infrastructure SIP

Continued

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2012 Annual $PM_{2.5}$ NAAQS. Georgia's SIP approved Air Quality Control Rule 391–3–1–.03(1)—''Construction (SIP) Permit.'' governs the preconstruction permitting of modifications, construction of minor stationary sources, and minor modifications of major stationary sources. EPA has made the preliminary determination that Georgia's SIP is adequate for program enforcement of control measures, PSD permitting for major sources, and regulation of new minor sources and modifications related to the 2012 Annual $PM_{2.5}$ NAAQS.

4. 110(a)(2)(D)(i)(I) and (II) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in 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), are provisions that 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 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), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4'').

110(a)(2)(D)(i)(I)—prongs 1 and 2: EPA is not proposing any action related to the provisions that 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 interfering with maintenance of the NAAQS in another state (''prong 2'') of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will consider these requirements in relation to Georgia's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II)—prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to: A PSD program meeting all the current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) to a NNSR program. As discussed in more detail previously under section 110(a)(2)(C), Georgia's SIP contains provisions for the State's PSD program that reflects the required structural PSD requirements to satisfy the requirement of prong 3 of section 110(a)(2)(D)(i)(II). Georgia addresses prong 3 through rules 391–3–1–.02.—''Provisions. Amended,'' and 391–3–1–.03.—''Permits. Amended,'' which include the PSD and NNSR requirements, respectively. EPA has made the preliminary determination that Georgia's SIP is adequate for interstate transport for PSD permitting of major sources and major modifications related to the 2012 Annual $PM_{2.5}$ NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

110(a)(2)(D)(i)(II)—prong 4: EPA is not proposing any action in this rulemaking related to provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong 4) and will consider this requirement in relation to Georgia's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

5. 110(a)(2)(D)(ii) *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. The following two Georgia Rules for Air Quality provide Georgia the authority to conduct certain actions in support of this infrastructure element: 391–3–1–.02(7) for the State's PSD regulation and 391–3–1–.03 for the State's permitting regulations. As described previously, Georgia Rules for Air Quality 391–3–1–.02.—''Provisions. Amended,'' and 391–3–1–.03.—''Permits. Amended,'' collectively require any new major source or major modification to undergo PSD or nonattainment new source review (NNSR) permitting and thereby provide notification to other potentially affected Federal, state, and local government agencies.

Additionally, Georgia does not have any pending obligation under section 115 and 126 of the CAA. EPA has made the preliminary determination that Georgia's SIP and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2012 Annual $PM_{2.5}$ NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA's analysis of sub-elements 110(a)(2)(E)(i), (ii), and (iii) is described below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), Georgia's infrastructure SIP demonstrates that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards and general policies, a system of permits, fee schedules for the review of plans, and other planning needs. In its SIP submittal, Georgia describes its authority for section 110(a)(2)(E)(i) as the CAA section 105 grant process, the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. 12–9–10), and Georgia Rule for Air Quality 391–3–1–.03(9) which establishes Georgia's Air Permit Fee System. For section 110(a)(2)(E)(iii), the State does not rely on localities in Georgia for specific SIP implementation. As evidence of the adequacy of EPD's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Georgia on April 19, 2016, outlining CAA section 105 grant commitments and the current status of these commitments for fiscal year 2015. The letter EPA submitted to EPD can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0425. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2015, therefore, EPD's grants were finalized and closed out. In addition, the requirements of 110(a)(2)(E)(i) and (iii) are evaluated when EPA performs a completeness determination for each SIP submittal. This determination ensures that each submittal includes information addressing the adequacy of personnel, funding, and legal authority under state law used to carry out the state's implementation plan and related

requirements, see the technical support document in the docket for this rulemaking.

issues. Georgia's authority is included in all prehearing and final SIP submittal packages for approval by EPA. EPD is responsible for submitting all revisions to the Georgia SIP to EPA for approval. EPA has made the preliminary determination that Georgia has adequate resources for implementation of the 2012 Annual $PM_{2.5}$ NAAQS.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that the SIP provide: (1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. With respect to the requirements of section 110(a)(2)(E)(ii) pertaining the state board requirements of CAA section 128, Georgia's infrastructure SIP submission cites Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–5) *Powers and duties of Board of Natural Resources as to air quality generally*) which provides the powers and duties of the Board of Natural Resources as to air quality and provides that at least a majority of members of this board represent the public interest and not derive any significant portion of income from persons subject to permits or enforcement orders and that potential conflicts of interest will be adequately disclosed. This provision has been incorporated into the federally-approved SIP.

EPA has made the preliminary determination that the State has adequately addressed the requirements of section 128(a), and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements. Therefore, EPA is proposing to approve Georgia's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

7. 110(a)(2)(F) *Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) 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, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. Georgia's SIP submission identifies how the major source and minor source emission inventory programs collect emission data throughout the State and ensure the quality of such data. These data are used to compare against current emission limits and to meet requirements of EPA's Air Emissions Reporting Rule (AERR). The following State rules enable Georgia to meet the requirements of this element: Georgia Rule for Air Quality 391–3–1–.02(3)—''Sampling.''; [22] 391–3–1–.02(6)(b)—''Source Monitoring.''; 391–3–1–.02(7)—''Prevention of Significant Deterioration of Air Quality.''; 391–3–1–.02(8)—''New Source Performance Standards.''; 391–3–1–.02(9)—''Emission Standards for Hazardous Air Pollutants.''; 391–3–1–.02(11)—''Compliance Assurance Monitoring.''; and 391–3–1–.03—''Permits. Amended.'' Also, the Georgia Air Quality Act Article I: Air Quality (O.C.G.A. 12–9–5(b)(6)) provides the State with the authority to conduct actions regarding stationary source emissions monitoring and reporting in support of this infrastructure element. These rules collectively require emissions monitoring and reporting for activities that contribute to $PM_{2.5}$ concentrations in the air, including requirements for the installation, calibration, maintenance, and operation of equipment for continuously monitoring or recording emissions, and provide authority for EPD to establish such emissions monitoring and reporting requirements through SIP-approved permits and require reporting of 2012 Annual $PM_{2.5}$ emissions.

Additionally, Georgia is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the AERR on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Georgia made its latest update to the 2011 NEI on December 12, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Georgia's SIP and practices are adequate for the stationary source monitoring systems related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(F).

Georgia Rule for Air Quality 391–3–1–.02(3), ''Sampling,'' [23] specifically, in ''Procedures for Testing and Monitoring Sources of Air Pollutants'' under *Compliance with Standards and Maintenance Requirements* allows the use of all available information to determine compliance, and EPA is unaware of any provision preventing the use of credible evidence in the Georgia SIP.[24] EPA is unaware of any provision preventing the use of credible evidence in the Georgia SIP.

8. 110(a)(2)(G) *Emergency Powers:* Section 110(a)(2)(G) of the Act requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Georgia's infrastructure SIP submission cites air pollution emergency episodes and preplanned abatement strategies in the Georgia Air Quality Act: Article 1: Air Quality (O.C.G.A. Sections 12–9–2 *Declaration of public policy,* 12–9–6 *Powers and duties of director as to air quality generally,* 12–9–12 *Injunctive relief,* 12–9–13 *Proceedings for enforcement,* and 12–9–14 *Powers of director in situations involving imminent and substantial danger to public health*), and Rule 391–3–1-.04 ''Air Pollution Episodes.'' O.C.G.A. Section 12–9–2 provides ''[i]t is declared to be the public policy of the state of Georgia to preserve, protect, and improve air quality . . . to attain and

[22] Georgia Rule for Air Quality 391–3–1–.02(3)—''Sampling.'' is not approved into Georgia's federally-approved SIP.

[23] Georgia Rule for Air Quality 391–3–1–.02(3)—''Sampling.'' is not approved into Georgia's federally-approved SIP.

[24] ''*Credible Evidence,*'' makes allowances for owners and/or operators to utilize ''any credible evidence or information relevant'' to demonstrate compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certification, and can be used to establish whether or not an owner or operator has violated or is in violation of any rule or standard.

maintain ambient air quality standards so as to safeguard the public health, safety, and welfare.'' O.C.G.A. Section 12–9–6(b)(10) provides the Director of EPD authority to ''issue orders as may be necessary to enforce compliance with [the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A)] and all rules and regulations of this article.'' O.C.G.A. Section 12–9–12 provides that ''[w]henever in the judgment of the director any person has engaged in or is about to engage in any act or practice which constitutes or will constitute an unlawful action under [the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A)], he may make application to the superior court of the county in which the unlawful act or practice has been or is about to be engaged in, or in which jurisdiction is appropriate, for an order enjoining such act or practice or for an order requiring compliance with this article. Upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy of law.'' O.C.G.A. Section 12–19–13 specifically pertains to enforcement proceedings when the Director of EPD has reason to believe that a violation of any provision of the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A), or environmental rules, regulations or orders have occurred. O.C.G.A. Section 12–9–14 also provides that the Governor may issue orders as necessary to protect the health of persons who are, or may be, affected by a pollution source or facility after ''consult[ation] with local authorities in order to confirm the correctness of the information on which action proposed to be taken is based and to ascertain the action which such authorities are or will be taking.''

Rule 391–3–1–.04 ''Air Pollution Episodes'' provides that the Director of EPD ''will proclaim that an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency exists when the meteorological conditions are such that an air stagnation condition is in existence and/or the accumulation of air contaminants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a substantial threat to the health of persons in the specific area affected.'' Collectively the cited provisions provide that Georgia demonstrates authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority in the State. EPA has made the preliminary determination that Georgia's SIP, and State laws are adequate for emergency powers related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) As may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. EPD is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Georgia. The State has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. Initially, eight areas in Georgia were designated deferred for the 2012 Annual $PM_{2.5}$ NAAQS. *See* 80 FR 2205 (January 15, 2015). As of March 31, 2015, five areas in Georgia were designated unclassifiable/attainment. *See* 80 FR 18535 (April 7, 2015). Currently, based on early quality-assured, certified air quality monitoring data for 2013–2015, it appears that the remaining areas are attaining the 2012 Annual $PM_{2.5}$ NAAQS.

The Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–6(b)(12) and 12–9–6(b)(13)) provide Georgia the authority to conduct certain actions in support of this infrastructure element. Section 12–9–6(b)(12) of the Georgia Air Quality Act requires EPD to submit SIP revisions whenever revised air quality standards are promulgated by EPA. EPA has made the preliminary determination that Georgia adequately demonstrates a commitment to provide future SIP revisions related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) *Consultation With Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve Georgia's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, the public notification requirements of section 127, PSD and visibility protection. EPA's rationale for applicable consultation requirements of section 121, the public notification requirements of section 127, PSD, and visibility is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations, and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. The following State rules and statutes, as well as the State's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities: Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–5(b)(17)); Georgia Administrative Procedures Act (O.C.G.A. § 50–13–4); and Georgia Rule 391–3–1–.02(7) as it relates to Class I areas. Section 12–9–5(b)(17) of the Georgia Air Quality Act states that the DNR Board is to ''establish satisfactory processes of consultation and cooperation with local governments or other designated organizations of elected officials or federal agencies for the purpose of planning, implementing, and determining requirements under this article to the extent required by the federal act.''

Additionally, Georgia adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development.[25] Required partners covered by Georgia's consultation procedures include federal, state and local transportation and air quality agency officials. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate consultation with government officials related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(J) consultation with government officials.

Public notification (127 public notification): EPD has public notice

[25] Georgia rule 391–3–1–.15, *Georgia Transportation Conformity and Consultation Interagency Rule,* is approved into the State's SIP. *See* 77 FR 35866.

mechanisms in place to notify the public of instances or areas exceeding the NAAQS along with associated health effects through the Air Quality Index reporting system in required areas. EPD's Ambient Monitoring Web page (*www.georgiaair.org/amp*) provides information regarding current and historical air quality across the State. Daily air quality forecasts may be disseminated to the public in Atlanta through the Georgia Department of Transportation's electronic billboards. In its SIP submission, Georgia also notes that the non-profit organization in Georgia, ''Clean Air Campaign,'' disseminates statewide air quality information and ways to reduce air pollution. Georgia rule 391–3–1–.04 ''Air Pollution Episodes'' enables the State to conduct certain actions in support of this infrastructure element. In addition, the following State statutes provide Georgia the authority to make public declarations about air pollution episodes in support of this infrastructure element. OCGA 12–9–6(b)(8) provides authority to the Georgia Board of Natural Resources ''To collect and disseminate information and to provide for public notification in matters relating to air quality . . .''. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

PSD: With regard to the PSD element of section 110(a)(2)(J), this requirement is met by a state's confirmation in an infrastructure SIP submission that it has a SIP-approved PSD program meeting all the current structural requirements of part C of title I of the CAA for all regulated NSR pollutants. As discussed in more detail previously in this preamble under section 110(a)(2)(C), Georgia's SIP contains provisions for the State's PSD program that reflect the required structural PSD requirements to satisfy the PSD element of section 110(a)(2)(J). EPA has made the preliminary determination that Georgia's SIP and practices are adequate for the 2012 Annual $PM_{2.5}$ NAAQS for the PSD element of section 110(a)(2)(J).

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that it does not need to address the visibility protection element of section 110(a)(2)(J) in Georgia's infrastructure SIP submission related to the 2012 Annual $PM_{2.5}$ NAAQS.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. The Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–6(b)(13)) provides EPD the authority to conduct modeling actions and to submit air quality modeling data to EPA in support of this element. EPD maintains personnel with training and experience to conduct source-oriented dispersion modeling with models such as AERMOD that would likely be used for modeling $PM_{2.5}$ emissions from sources. The State also notes that its SIP-approved PSD program, which includes specific (dispersion) modeling provisions, provides further support of Georgia's ability to address this element. All such modeling is conducted in accordance with the provisions of 40 CFR part 51, Appendix W, ''Guideline on Air Quality Models.''

Additionally, Georgia supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2012 Annual $PM_{2.5}$ NAAQS, for the Southeastern states. Taken as a whole, Georgia's air quality regulations and practices demonstrate that Georgia has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2012 Annual $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting Fees:* Section 110(a)(2)(L) requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) The reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Georgia's PSD and NNSR permitting programs are funded with title V fees. The Georgia Rule for Air Quality 391–3–1–.03(9) ''Permit Fees.'' incorporates the EPA-approved title V fee program and fees for synthetic minor sources. Georgia's authority to mandate funding for processing PSD and NNSR permits is found in Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. 12–9–10). The State notes that these title V operating program fees cover the reasonable cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Georgia's SIP and practices adequately provide for permitting fees related to the 2012 Annual $PM_{2.5}$ NAAQS, when necessary. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation/participation by affected local entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. Consultation and participation by affected local entities is authorized by the Georgia Air Quality Act: Article 1: Air Quality (O.C.G.A. 12–9–5(b)(17)) and the Georgia Rule for Air Quality 391–3–1–.15—''Transportation Conformity'', which defines the consultation procedures for areas subject to transportation conformity. Furthermore, EPD has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP and has worked with the FLMs as a requirement of the regional haze rule. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate consultation with affected local entities related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary.

V. Proposed Action

With the exception of interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), EPA is proposing to approve Georgia's December 14, 2015, SIP submission, for the 2012 Annual $PM_{2.5}$ NAAQS for the above described infrastructure SIP requirements. EPA is proposing to approve Georgia's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS because the submission is consistent with section 110 of the CAA.

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 Act and applicable Federal regulations. *See* 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 proposed 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 proposed 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 9, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–20139 Filed 8–22–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 402, 420, and, 455

[CMS–6074–NC]

RIN 0938–ZB31

Request for Information: Inappropriate Steering of Individuals Eligible for or Receiving Medicare and Medicaid Benefits to Individual Market Plans

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information.

SUMMARY: This request for information seeks public comment regarding concerns about health care providers and provider-affiliated organizations steering people eligible for or receiving Medicare and/or Medicaid benefits to an individual market plan for the purpose of obtaining higher payment rates. CMS is concerned about reports of this practice and is requesting comments on the frequency and impact of this issue from the public. We believe this practice not only could raise overall health system costs, but could potentially be harmful to patient care and service coordination because of changes to provider networks and drug formularies, result in higher out-of-pocket costs for enrollees, and have a negative impact on the individual market single risk pool (or the combined risk pool in states that have chosen to merge their risk pools). We are seeking input from stakeholders and the public regarding the frequency and impact of this practice, and options to limit this practice.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on September 22, 2016.

ADDRESSES: In commenting, refer to file code CMS–6074–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–*6074*–NC, P.O. Box 8010, Baltimore, MD 21244–*8010.*

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–*6074*–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots