include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to the EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States District Court for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

In its December 9, 2014 letter, New Hampshire indicated that it will not implement the GHG requirements as to sources that would be subject to the PSD program solely by virtue of their GHG emissions. New Hampshire indicated that it will not treat GHG as a pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. However, consistent with the Supreme Court's June 23, 1014 decision, New Hampshire will be implementing the GHG requirements that apply to sources that are subject to the PSD program requirements by virtue of other regulated pollutants. Once EPA revises its regulations to address the Supreme Court's recent GHG decision, the NH DES will revise its rules and submit the revisions to EPA for approval into the SIP.

V. What action is EPA taking?

EPA proposes to approve the NH DES's November 15, 2012 proposed SIP revision. The proposed SIP revision, as clarified in a letter dated December 9, 2014 from the NH DES, establishes a state PSD program at Env-A 619, ''Prevention of Significant Deterioration'' that meets all requirements for a SIP-approved PSD program under 40 CFR 51.166, section 110 of the CAA, and EPA regulations.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 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 Clean Air Act; 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 31, 2014.

Deborah A Szaro,

Acting Regional Administrator, EPA New England.

[FR Doc. 2015–00872 Filed 1–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0701; FRL–9921–70–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Infrastructure Requirements for the 2008 Ozone, 2010 Nitrogen Dioxide, and 2010 Sulfur Dioxide National Ambient Air Quality Standards; Approval of Air Pollution Emergency Episode Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of three State Implementation Plan (SIP) revision submittals from the District of Columbia (hereafter ''the District'') pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The District has made three separate submittals addressing the infrastructure requirements for the 2008 ozone NAAQS, the 2010 nitrogen dioxide (NO_2) NAAQS, and the 2010 sulfur dioxide (SO_2) NAAQS. One of the infrastructure submittals also includes the ''Revised Air Quality Emergency Plan for the District of Columbia'' for

satisfying EPA's requirements for air quality emergency episodes. In this rulemaking action, EPA is proposing to approve, in accordance with the requirements of the CAA: The three infrastructure SIP submissions with the exception of the portions of the submittals addressing transport of pollution and the portions of the submittals addressing the Prevention of Significant Deterioration (PSD) permitting requirements; and the District's Air Quality Emergency Plan which also meets EPA's requirements for air pollution prevention contingency plans.

DATES: Written comments must be received on or before February 20, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0701 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. Email: fernandez.cristina@epa.gov.

C. Mail: EPA–R03–OAR–2014–0701, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0701. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *www.regulations.gov* or email. The *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 email comment directly to EPA without going through *www.regulations.gov,* your email 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 27, 2008 (73 FR 16436), EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm. On February 9, 2010 (75 FR 6474), EPA established a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. On June 22, 2010 (75 FR 35520), EPA promulgated a revised NAAQS for the 1-hour primary SO_2 at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.

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. 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 affects the content of the submission. The content of such SIP submission 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 earlier, 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.

II. Summary of State Submittals

The District through the District Department of the Environment (DDOE) submitted three separate revisions to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the different NAAQS. On June 6, 2014, DDOE submitted a SIP revision addressing the infrastructure requirements for the 2010 NO_2 NAAQS. On June 13, 2014, DDOE submitted an infrastructure SIP revision for the 2008 ozone NAAQS. On July 17, 2014, DDOE submitted an infrastructure SIP revision for the 2010 SO_2 NAAQS. Each of the infrastructure SIP revisions addressed the following infrastructure elements for the applicable NAAQS: Section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA. The three infrastructure SIP submittals do not address section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1) and will be addressed in a separate process, if necessary.

In addition, the June 13, 2014 SIP submittal includes the ''Revised Air Quality Emergency Plan for the District of Columbia,'' which the District is requesting EPA to approve into the SIP to address EPA's requirements for preventing air pollution emergency episodes which are located in 40 CFR

part 51, subpart H and section 110(a)(2)(G) of the CAA. Section 110(a)(2)(G), among other things, requires state SIPs to provide adequate contingency plans to implement a state's authority similar to section 303 of the CAA regarding imminent and substantial endangerment authority. The entire District is part of the National Capital Interstate air quality control region, which is classified as a Priority I region for particulate matter, sulfur oxides (SO_X), carbon monoxide (CO), and ozone and as a Priority III region for NO_2. *See* 40 CFR 52.471. Therefore, in accordance with 40 CFR part 51, subpart H, the District submitted its Air Quality Emergency Plan with contingency measures for all pollutants, including particulate matter, SO_X, CO, and ozone.

III. EPA's Approach To Review Infrastructure SIPs

EPA is acting upon the District's SIP submissions that addresses the infrastructure requirements of section 110(a)(1) and (2) of the CAA for the 2008 ozone NAAQS, the 2010 NO_2 NAAQS, and the 2010 SO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of 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 section 110(a)(1) and (2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''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 section 169A of the CAA, and nonattainment new source review 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.[1] 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 CAA, which specifically address nonattainment SIP requirements.[2] 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.[3] 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 section 110(a)(1) and (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.[4] 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 elements and sub-elements of the same infrastructure SIP submission.[5]

[1] 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.

[2] *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 NO_X 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)).

[3] 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.

[4] *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).

[5] 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

Continued

Ambiguities within section 110(a)(1) and (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.[6]

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 attainment plan SIP submissions required by part D to meet the ''applicable requirements'' of section 110(a)(2); thus, 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 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.[7] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[8] 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.[9] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). EPA interprets section 110(a)(1) and (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 SIP 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 section 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 NSR pollutants, including Green House Gases (GHGs). By 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 2013 $PM_{2.5}$ 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 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.

[6] 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.

[7] 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.

[8] ''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.

[9] 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.3d 7 (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 assuring that the state's SIP 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 new source review 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.[10] 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 section 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 section 110(a)(1) and (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 SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[11] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[12] 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.[13]

IV. Summary of EPA's Rationale for Proposing Approval

In accordance with 40 CFR part 51, appendix V, EPA found that each of the infrastructure SIP submittals is technically incomplete for the portions of the infrastructure elements in section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) relating to the permitting program for PSD, because the District has not adequately addressed the requirements of part C of Title I of the CAA for having a SIP-approved PSD program. EPA found the remainder of the SIP submittals to be administratively and technically complete. EPA sent letters to DDOE in July 21, 2014 and November 4, 2014 notifying the District of these determinations for each of the applicable NAAQS.[14] As a result of

[10] 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.

[11] 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).

[12] 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 section 110(k)(6) of the CAA 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).

[13] *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 (January 26, 2011) (final disapproval of such provisions).

[14] Letters regarding EPA's completeness determinations are included in the docket for this rulemaking action.

these incompleteness findings, EPA is not taking rulemaking action on the PSD-related portions of section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the District's infrastructure SIP submittals for the 2010 NO_2 NAAQS, the 2008 ozone NAAQS, and the 2010 SO_2 NAAQS, until the District through DDOE submits a SIP to address the PSD permit program requirements of part C of Title I of the CAA.

EPA recognizes, however, that the District of Columbia is already subject to a Federal Implementation Plan (FIP) containing the Federal PSD program [15] to correct the SIP deficiency and that DDOE would not have to take further action for the FIP-based permitting process to continue operating. Thus, EPA anticipates that there will be no adverse consequences to DDOE from these incompleteness findings for the PSD-related portions of section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the 2008 ozone NAAQS and 2010 NO_2 and SO_2 NAAQS. Mandatory sanctions would not apply to the District under CAA section 179 because the failure to submit a PSD SIP is neither (1) with respect to a submission that is required under CAA Title I part D, or (2) in response to a SIP call under CAA section 110(k)(5). In addition, EPA is not subject to any further FIP duties from our finding of incompleteness for these SIP submittals because there is already the FIP implementing the Federal PSD program for DDOE which addresses the SIP deficiency.

In addition, EPA is also not taking rulemaking action at this time on the portion of the infrastructure SIP submittals which address section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS and the 2010 NO_2 and SO_2 NAAQS. EPA will take later rulemaking action on these submittals regarding section 110(a)(2)(D)(i)(I). In this rulemaking action, EPA is proposing approval of the remainder of the submittals to address infrastructure requirements for the 2010 NO_2 NAAQS, the 2008 ozone NAAQS, and the 2010 SO_2 NAAQS. A detailed summary of EPA's review and rationale for proposing to approve these portions of the District's infrastructure SIP submittals may be found in the Technical Support Document (TSD) for this proposed rulemaking action which is available on line at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2014–0701.

As mentioned previously, on June 13, 2014, the District also submitted a SIP revision addressing EPA's contingency plan requirements in 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) and in CAA section 110(2)(G). Section 110(a)(2)(G), among other things, requires state SIPs to provide adequate contingency plans to implement the state's authority similar to section 303 of the CAA, regarding imminent and substantial endangerment authority. Pursuant to 40 CFR part 51, subpart H, the District is required to have a contingency plan for particulate matter, SO_X, CO, and ozone. EPA notes that there are no applicable requirements under 40 CFR part 51, subpart H for NO_2, and consequently no applicable contingency plan requirements under CAA section 110(a)(2)(G) for NO_2 for the District, as Priority III regions are not required to have emergency episode plans.

EPA finds that the District's Emergency Plan satisfies the requirements of 40 CFR part 51, subpart H with respect to contingency plans for all applicable pollutants. In this rulemaking action, EPA is proposing to approve into the SIP the ''Revised Air Quality Emergency Plan for the District of Columbia,'' pursuant to section 110 of the CAA, and is also proposing that the three infrastructure SIP submittals for the applicable NAAQS meet the applicable contingency plan requirements in CAA section 110(a)(2)(G) for the 2008 ozone NAAQS, 2010 NO_2 NAAQS, and 2010 SO_2 NAAQS. A detailed summary of EPA's review and rationale for approving the ''Revised Air Quality Emergency Plan for the District of Columbia'' into the District's SIP because it meets requirements in CAA section 110 and 40 CFR part 51, subpart H is provided in our TSD accompanying this proposed rulemaking action. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Proposed Action

EPA is proposing to approve the District's infrastructure submittals dated June 6, 2014, June 13, 2014, and July 17, 2014 for the 2010 NO_2 NAAQS, the 2008 ozone NAAQS, and the 2010 SO_2 NAAQS, respectively, as meeting the requirements of section 110(a)(2) of the CAA, including specifically section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the three NAAQS with the exception of the requirements related to the PSD permitting program of part C, Title I of the CAA in section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J), and with the exception of the transport requirement of section 110(a)(2)(D)(i)(I). EPA is not taking action on the portions of the three infrastructure submittals intended to address section 110(a)(2)(D)(i)(I) for transport or on the portions of the three infrastructure SIP submittals addressing the PSD related requirements in section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J). EPA will take later separate action on section 110(a)(2)(D)(i)(I) of the CAA for transport for the three NAAQS.

EPA is also proposing to approve as a SIP revision the ''Revised Air Quality Emergency Plan for the District of Columbia,'' submitted on June 13, 2014, as it satisfies the requirements of 40 CFR part 51, subpart H for all applicable pollutants and section 110 of the CAA, including specifically section 110(a)(2)(G) for the 2008 ozone NAAQS, the 2010 NO_2 NAAQS, and the 2010 SO_2 NAAQS.

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 proposes to approve 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 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

[15] On August 7, 1980 (45 FR 52676, at 52741), EPA disapproved a number of states SIPs for PSD purposes, including the District and incorporated by reference portions of the Federal PSD provisions in 40 CFR 52.21 into the implementation plans for those states. This FIP was subsequently amended to reflect amendments to the Federal PSD rule on March 10, 2003 (68 FR 11316, at 11322) and December 24, 2003 (68 FR 74483, at 74488). At present, the PSD FIP, incorporated by reference in the District SIP in 40 CFR 52.499, specifically contains the provisions of 40 CFR 52.21, with the exception of paragraph (a)(1).

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 proposed rulemaking action, pertaining to the District of Columbia's section 110(a)(2) infrastructure requirements for the 2008 ozone, the 2010 NO_2, and the 2010 SO_2 NAAQS and to the District of Columbia's contingency plan for the prevention of air pollution episodes, 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: December 18, 2014.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2015–00640 Filed 1–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0790; FRL–9919–36–OAR]

RIN 2060–AS10

National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; request for public comment.

SUMMARY: On February 1, 2013, the Environmental Protection Agency (EPA) finalized amendments to the National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers (Area Source Boilers Rule). Subsequently, the EPA received three petitions for reconsideration of the final rule. The EPA is announcing reconsideration of and requesting public comment on five issues raised in the petitions for reconsideration, as detailed in the **SUPPLEMENTARY INFORMATION** section of this document.

In this action, the EPA is also proposing a limited number of technical corrections and amendments to the final rule to correct inadvertent errors and to clarify some applicability and implementation issues raised by stakeholders subject to the final rule. Also, we propose to delete rule provisions for an affirmative defense for malfunction in light of a recent court decision on the issue.

The EPA is seeking comment only on the five issues being reconsidered, the proposed deletion of the affirmative defense and on the technical corrections and amendments described in the preceding paragraph. The EPA will not respond to any comments addressing any other issues or any other provisions of the final rule.

DATES: *Comments.* Comments must be received on or before March 9, 2015, or 30 days after date of public hearing, if later.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by January 26, 2015, a public hearing will be held on February 5, 2015. If you are interested in attending the public hearing, contact Ms. Pamela Garrett at (919) 541–7966 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0790, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail code: 28221T, Attention Docket ID No. EPA–HQ–OAR–2006–0790, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand/Courier Delivery:* EPA Docket Center (EPA/DC), Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0790. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *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 *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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.

Public Hearing: If anyone contacts the EPA requesting a public hearing by January 26, 2015, the public hearing will be held on February 5, 2015 at the