• *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
• Email: *ostigaard.crystal@epa.gov.*
• Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
• Mail: Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
• Hand Delivery: Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule, which is located in the Rules section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, the EPA is approving the State's SIP revision through a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. Then, EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. See the information provided in the direct final action of the same title which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, PM_{10}, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 17, 2014.

Shaun L. McGrath,
Regional Administrator.

[FR Doc. 2015–00778 Filed 1–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0689; FRL–9921–88–Region 4]

Approval and Promulgation of Implementation Plans; Alabama; Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve in part and disapprove in part the State Implementation Plan (SIP) revision, submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), for inclusion into the Alabama SIP. This proposal pertains to the Clean Air Act (CAA or the Act) infrastructure requirements for the 2008 8-hour ozone national ambient air quality standards (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. ADEM certified that the Alabama SIP contains provisions that ensure the 2008 8-hour ozone NAAQS is implemented, enforced, and maintained in Alabama. With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting, interstate transport, and visibility protection requirements for which EPA is proposing no action through this notice, and with the exception of the provisions respecting state boards, for which EPA is proposing disapproval, EPA is proposing to approve Alabama's infrastructure SIP submission provided to EPA on August 20, 2012, as satisfying the required infrastructure elements for the 2008 8-hour ozone NAAQS.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0689, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0689,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0689. 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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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 at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at *ward.nacosta@epa.gov.*

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I. Background and Overview

On March 27, 2008, EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour ozone NAAQS to 0.075 parts per million. *See* 77 FR 16436. 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 2008 8-hour ozone NAAQS to EPA no later than March 2011.[1] ADEM made this submission and certified that the Alabama SIP contains provisions that ensure the 2008 8-hour ozone NAAQS is implemented, enforced, and maintained in Alabama (hereafter referred to as an ''infrastructure SIP submission'').

Today's action is proposing to approve Alabama's infrastructure SIP submission for the applicable requirements of the 2008 8-hour ozone NAAQS, with the exception of the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), the state board requirements of section 110(a)(2)(E)(ii) and the visibility requirements of 110(a)(2)(J). With respect to Alabama's infrastructure SIP submission related to the provisions pertaining to the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II), and the visibility requirements of 110(a)(2)(J), EPA is not proposing any action today regarding these requirements. EPA will act on these portions of Alabama's submission in a separate action. With respect to Alabama's infrastructure SIP submission related to section 110(a)(2)(E)(ii) requirements respecting the section 128 state board requirements, EPA is proposing to disapprove this element of Alabama's submission in today's rulemaking. Finally, EPA notes that this action is not approving any specific rule, but rather proposing that Alabama'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 ''ADEM Admin. Code r.'' indicates that the cited regulation has been approved into Alabama's federally-approved SIP. The term ''Ala. Code'' refers to Alabama state statutes, which, unless otherwise indicated, are not a part of the federally-approved SIP.

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 affects 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. In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 8-hour ozone NAAQS.

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 above, 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 of section 110(a)(2) are summarized below 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).'' [2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System

[2] 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 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. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

- 110(a)2(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources
- 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 [3]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and 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 Alabama that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 8-hour ozone 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 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.[4] 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.[5] 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.[6] 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.[7] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a

[3] As mentioned above, this element is not relevant to today's proposed rulemaking.

[4] 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.

[5] *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)).

[6] 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.

[7] *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).

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.[8]

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.[9]

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 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.[10] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[11] 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.[12] 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 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 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 NSR pollutants, including GHGs. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40

[8] 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.

[9] 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.

[10] 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.

[11] ''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.

[12] 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.

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 $PM_{2.5}$ 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 SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, among other things, 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.[13] 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 SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[14] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[15] 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.[16]

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

Alabama's infrastructure SIP submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A) *Emission limits and other control measures:* Several

[13] 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.

[14] 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).

[15] 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).

[16] *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).

regulations within Alabama's SIP are relevant to air quality control regulations. The regulations described below have been federally approved in the Alabama SIP and include enforceable emission limitations and other control measures. ADEM Admin. Code r. 335–3–1–.03—*Ambient Air Quality Standards,* authorizes ADEM to adopt rules for the control of air pollution in order to comply with NAAQS, including those necessary to obtain EPA approval under section 110 of the CAA. This regulation along with ADEM Admin. Code r. 335–3–1–.06—*Compliance Schedule,* set the schedule for compliance with the State's Air Pollution Control rules and regulations to be consistent with the requirements of the CAA. ADEM Admin. Code r. 335–3–1–.05—*Sampling and Testing Methods,* details the authority and means with which ADEM can require testing and emissions verification. EPA has made the preliminary determination that the provisions contained in these regulations and Alabama's practices are adequate to protect the 2008 8-hour ozone 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 of 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 plans to address such state regulations in a separate action.[17] In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

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:* ADEM Admin. Code r. 335–3–1–.04—*Monitoring, Records, and Reporting,* requires sources to submit emissions monitoring reports as prescribed by the Director of ADEM. Pursuant to this regulation, these sources collect air monitoring data, quality assure the results, and report the data to EPA. ADEM Admin. Code r. 335–3–1–.05—*Sampling and Testing Methods,* details the authority and means with which ADEM can require testing and emissions verification. ADEM Admin. Code r. 335–3–14–.04—*Air Permits Authorizing Construction in Clean Air: Prevention of Significant Deterioration Permitting (PSD),* describes the State's use of ambient air quality monitoring data for purposes of permitting new facilities and assessing major modifications to existing facilities. 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 a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[18] On June 4, 2013, Alabama submitted its plan to EPA. On November 22, 2013, EPA approved Alabama's monitoring network plan. Alabama's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0689. EPA has made the preliminary determination that Alabama's SIP and practices are adequate for the ambient air quality monitoring and data systems related to the 2008 8-hour ozone NAAQS.

3. 110(a)(2)(C) *Program for enforcement of control measures including review of proposed new 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). ADEM's 2008 8-hour ozone NAAQS infrastructure SIP submission cited a number of SIP provisions to address these requirements. Specifically, the submission cited ADEM Admin. Code r. 335–3–14–.04—*Air Permits Authorizing Construction in Clean Air Areas: Prevention of Significant Deterioration Permitting (PSD)* and ADEM Admin. Code r. 335–3–14–.05—*Air Permits Authorizing Construction in or Near Nonattainment Areas.* Collectively, these provisions of Alabama's SIP regulate the construction of any new major stationary source or any modification at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable. As discussed further below, in this action EPA is only proposing to approve the enforcement, and the regulation of minor sources and minor modifications aspects of Alabama's section 110(a)(2)(C) infrastructure SIP submission.

Enforcement: ADEM's above-described, SIP-approved regulations provide for enforcement of ozone precursor (VOC and NO_X) emission limits and control measures and construction permitting for new or modified stationary sources.

Preconstruction PSD Permitting for Major Sources: With respect to Alabama's infrastructure SIP submission related to the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), EPA is not proposing any action today regarding these requirements and instead will act on this portion of the submission in a separate action.

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 2008 8-hour ozone NAAQS. ADEM Admin. Code r. 334–3–14–.03—*Standards for Granting Permits,* governs the preconstruction permitting of modifications and construction of minor stationary sources.

EPA has made the preliminary determination that Alabama's SIP and practices are adequate for program enforcement of control measures and regulation of minor sources and modifications related to the 2008 8-hour ozone 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 have 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

[17] On February 22, 2013, EPA published a proposed action in the **Federal Register** entitled, ''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed Rule.'' *See* 78 FR 12460.

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

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''). With respect to Alabama's infrastructure SIP submission related to the interstate transport requirements of section 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II) (prongs 1 through 4), EPA is not proposing any action today regarding these requirements and instead will act on these portions of the submission in a separate action.

5. 110(a)(2)(D)(ii) *Interstate and International transport provisions:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. ADEM Admin. Code r. 335–3–14–.04—*Prevention of Significant Deterioration in Permitting* describes how Alabama notifies neighboring states of potential emission impacts from new or modified sources applying for PSD permits. This regulation requires ADEM to provide an opportunity for a public hearing to the public, which includes State or local air pollution control agencies, ''whose lands may be affected by emissions from the source or modification'' in Alabama. Additionally, Alabama does not have any pending obligation under sections 115 and 126 of the CAA. Accordingly, EPA has made the preliminary determination that Alabama's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2008 8-hour ozone NAAQS.

6. 110(a)(2)(E) *Adequate resources:* 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 is proposing to approve Alabama's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i) and (iii). With respect to sub-element 110(a)(2)(E)(ii) (regarding state boards), EPA is proposing to disapprove this sub-element. EPA's rationale respecting each sub-element is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), ADEM's infrastructure submission demonstrate that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards general policies, a system of permits, fee schedules for the review of plans, and other planning needs. As evidence of the adequacy of ADEM's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to ADEM on April 24, 2014, outlining 105 grant commitments and current status of these commitments for fiscal year 2013. The letter EPA submitted to Alabama can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0689. 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 2013, therefore, Alabama's grants were finalized and closed out. EPA has made the preliminary determination that Alabama has adequate resources for implementation of the 2008 8-hour ozone NAAQS. In addition, the requirements of 110(a)(2)(E)(i) and (iii) are met when EPA performs a completeness determination for each SIP submittal. This determination ensures that each submittal provides evidence that adequate personnel, funding, and legal authority under state law has been used to carry out the state's implementation plan and related issues. Alabama's authority is included in all prehearings and final SIP submittal packages for approval by EPA. EPA has made the preliminary determination that Alabama has adequate resources for implementation of the 2008 8-hour ozone 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. After reviewing Alabama's SIP, EPA has made the preliminary determination that the State's implementation plan does not contain provisions to comply with section 128 of the Act, and thus Alabama's August 20, 2012, infrastructure SIP submission does not meet the requirements of the Act. While Alabama has state statutes that may address, in whole or in part, requirements related to state boards at the state level, these provisions are not included in the SIP as required by the CAA. Based on an evaluation of the federally-approved Alabama SIP, EPA is proposing to disapprove Alabama's infrastructure SIP submission as meeting the requirements of 110(a)(2)(E)(ii) of the CAA for the 2008 8-hour ozone NAAQS. The submitted provisions which purport to address 110(a)(2)(E)(ii) are severable from the other portions of ADEM's infrastructure SIP submission, therefore, EPA is proposing to disapprove those provisions which relate only to sub-element 110(a)(2)(E)(ii).

7. 110(a)(2)(F) *Stationary source monitoring system:* ADEM's infrastructure SIP submission describes the establishment of requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. The Alabama infrastructure SIP submission also describes how the major source and minor source emission inventory programs collect emission data throughout the State and ensure the quality of such data. Alabama meets these requirements through ADEM Admin. Code r. 335–3–1–.04—*Monitoring, Records, and Reporting,* and 335–3–12—*Continuous Monitoring Requirements for Existing Sources.* ADEM Admin. Code r. 335–3–1–.04, details how sources are required as appropriate to establish and maintain records; make reports; install, use, and maintain such monitoring equipment or methods and provide periodic emission reports as the regulation requires. These reports and records are required to be compiled, and submitted on forms furnished by the State. Additionally, ADEM Admin. Code r. 335–3–12–.02 requires owners and operators of emissions sources to ''install, calibrate, operate and maintain all monitoring equipment necessary for continuously monitoring the pollutants.'' [19] ADEM

[19] ADEM Admin. Code r. 335–3–12–.02 establishes that data reporting requirements for sources required to conduct continuous monitoring in the state should comply with data reporting requirements set forth at 40 CFR part 51, Appendix P. Section 40 CFR part 51, Appendix P includes that the averaging period used for data reporting should be established by the state to correspond to

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Admin. Code r. 335–3–1–.13—*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. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the Alabama SIP.

Additionally, Alabama 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 Air Emissions Reporting Rule (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 the precursors that form them—nitrogen oxides, SO_2, ammonia, lead, carbon monoxide, particulate matter, and VOC. Many states also voluntarily report emissions of hazardous air pollutants. Alabama made its latest update to the 2011 NEI on May 7, 2013. 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 Alabama's SIP and practices are adequate for the stationary source monitoring systems related to the 2008 8-hour ozone NAAQS.

8. 110(a)(2)(G) *Emergency Powers:* This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. ADEM Admin. Code r. 335–3–2—*Air Pollution Emergency,* provides for the identification of air pollution emergency episodes, episode criteria, and emissions reduction plans. Alabama's compliance with section 303 of the CAA and adequate contingency plans to implement such authority is also met by Ala. Code section 22–28–21 *Air Pollution Emergencies.* Ala. Code Section 22–28–21 provides ADEM the authority to order the ''person or persons responsible for the operation or operations of one or more air contaminants sources'' causing ''imminent danger to human health or safety in question to reduce or discontinue emissions immediately.'' The order triggers a hearing no later than 24-hours after issuance before the Environmental Management Commission which can affirm, modify or set aside the Director's order. Additionally, the Governor can, by proclamation, declare, as to all or any part of said area, that an air pollution emergency exists and exercise certain powers in whole or in part, by the issuance of an order or orders to protect the public health. EPA has made the preliminary determination that Alabama's SIP, state laws and practices are adequate to satisfy the infrastructure SIP obligations for emergency powers related to the 2008 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *Future SIP revisions:* As previously discussed, ADEM is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Alabama 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. ADEM Admin. Code r. 335–1–1–.03—*Organization and Duties of the Commission,*[20] provides ADEM with the authority to establish, adopt, promulgate, modify, repeal and suspend rules, regulations, or environmental standards which may be applicable to Alabama or ''any of its geographic parts.'' Admin. Code r. 335–1–1–.03—*Ambient Air Quality Standards,* provides ADEM the authority to amend, revise, and incorporate the NAAQS into its SIP. EPA has made the preliminary determination that Alabama adequately demonstrates a commitment to provide future SIP revisions related to the 2008 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submission with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) (121 consultation) *Consultation with government officials:* EPA is proposing to approve Alabama's infrastructure SIP submission for the 2008 8-hour ozone 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 and the public notification requirements of section 127. With respect to Alabama's infrastructure SIP submission related to the preconstruction PSD permitting and visibility protection requirements, EPA is not proposing any action today regarding these requirements and instead will act on these portions of the submission in a separate action. EPA's rationale for applicable consultation requirements of section 121 and the public notification requirements of section 127 is described below.

110(a)(2)(J) (121 consultation) Consultation with government officials: ADEM Admin. Code r. 335–3–1–.03—*Ambient Air Quality Standards,* as well as its Regional Haze Implementation Plan (which allows for continued consultation with appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Specifically, Alabama adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. These consultation procedures were developed in coordination with the transportation partners in the State and are consistent with the approaches used for development of mobile inventories for SIPs. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate consultation with government officials related to the 2008 8-hour ozone NAAQS when necessary.

110(a)(2)(J) (127 public notification) Public notification: ADEM Admin. Code r. 335–3–14–.01(7)—*Public Participation,* and 335–3–14–.05(13)—*Public Participation,* and Ala. Code section 22–28–21—*Air Pollution Emergencies,* provides for public notification when air pollution episodes occur. Furthermore, ADEM has several public notice mechanisms in place to notify the public of ozone and other pollutant forecasting. Alabama maintains a public Web site on which daily air quality index forecasts are posted for the Birmingham, Huntsville,

the averaging period specified in the emission test method used to determine compliance with an emission standard for the pollutant/source category in question.

[20] This regulation has not been incorporated into the federally-approved SIP.

and Mobile areas. This Web site can be accessed at: *http://adem.alabama.gov/programs/air/airquality.cnt.* Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

11. 110(a)(2)(K) *Air quality and modeling/data:* ADEM Admin. Code r 335–3–14–.04—*Prevention of Significant Deterioration Permitting,* of the Alabama SIP specifies that required air modeling be conducted in accordance with 40 CFR part 51, Appendix W ''Guideline on Air Quality Models.'' This regulation provides Alabama with the authority to conduct air quality modeling and report the results of such modeling to EPA. These regulations also demonstrate that Alabama has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2008 8-hour ozone NAAQS. Additionally, Alabama supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2008 8-hour ozone NAAQS, for the southeastern states. ADEM Admin. Code r 335–3–1–.04—*Monitoring, Records, and Reporting* details how sources are required as appropriate to establish and maintain records; make reports; install, use, and maintain such monitoring equipment or methods and provide periodic emission reports as the regulation requires. These reports and records are required to be compiled, and submitted on forms furnished by the State. Taken as a whole, Alabama's air quality regulations and practices demonstrate that ADEM has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS had been promulgated, and to provide such information to the EPA Administrator upon request. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2008 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting fees:* This section 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.

ADEM Admin. Code r. 335–1–6—*Application Fees*[21] requires ADEM to charge permit-specific fees to the applicant/source as authorized by State legislation and Ala. Code section 22–22A–5. ADEM thus assures its permitting fee structure is sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. Additionally, Alabama has a fully-approved title V operating permit program—ADEM Admin. Code r. 335–1–7—''*Air Division Operating Permit Fees''*[22]—that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Alabama's state rules and practices adequately provide for permitting fees related to the 2008 8-hour ozone NAAQS, when necessary. Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation/participation by affected local entities:* ADEM coordinates with local governments affected by the SIP. Alabama's SIP also includes a description of the public participation process for SIP development. Alabama has consulted with local entities for the development of transportation conformity and has worked with the Federal Land Managers as a requirement of its regional haze rule. More specifically, Alabama adopted State-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. These consultation and participation procedures have been approved in the Alabama SIP as the non-regulatory provisions: ''Alabama Interagency Transportation Conformity Memorandum of Agreement'' and ''Conformity SIP for Birmingham and Jackson County.'' These provisions were approved on May 11, 2000, and March 26, 2009, respectively. *See* 65 FR 30362 and 74 FR 13118. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials. The state and local transportation agency officials are most directly impacted by transportation conformity requirements and are required to provide public involvement for their activities including the analysis demonstrating how they meet transportation conformity requirements. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate consultation with affected local entities related to the 2008 8-hour ozone NAAQS when necessary.

V. Proposed Action

As described above, with the exception of the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), the state board requirements of section 110(a)(2)(E)(ii) and the visibility requirements of 110(a)(2)(J), EPA is proposing to approve Alabama's August 20, 2012, SIP submission for the 2008 8-hour ozone NAAQS for the above described infrastructure SIP requirements. EPA is proposing to disapprove section 110(a)(2)(E)(ii) of Alabama's infrastructure submission because the State's implementation plan does not contain provisions to comply with section 128 of the Act, and thus Alabama's August 20, 2012, infrastructure SIP submission does not meet the requirements of the Act. This proposed approval in part and disapproval in part, however, does not include the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), and the visibility requirements of section 110(a)(2)(J) and will be addressed by EPA in a separate action.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a CAA Part D Plan or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP call) starts a sanctions clock. The portion of section 110(a)(2)(E)(ii) provisions (the provisions being proposed for disapproval in today's notice) were not submitted to meet requirements for Part D or a SIP call, and therefore, if EPA takes final action

[21] This regulation has not been incorporated into the federally-approved SIP.

[22] Title V program regulations are federally approved but not incorporated into the federally-approved SIP.

to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and EPA approves the plan or plan revision before EPA promulgates such FIP.

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 Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 6, 2015.

V. Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2015–00870 Filed 1–20–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2014–0796; FRL–9921–75–Region 1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on November 15, 2012. The submittal proposes to ensure that the State PSD program is consistent with the Final New Source Review (NSR) Improvement Rule issued on December 31, 2002; the Final Rule Governing the Implementation of NSR for Fine Particulate Matter issued on May 16, 2008; and the Final Rule to Establish Increments, Significant Impact Levels (SILs) and a Significant Monitoring Concentration (SMC) issued on October 20, 2010. This action is being taken under the Clean Air Act (CAA).

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

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2014–0796 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: mcdonnell.ida@epa.gov.*
3. *Fax:* (617) 918–0653
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2014–0796'', Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier:* Deliver your comments to: Ida McDonnell, Manager, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics and Indoor Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2014–0796. 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 through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. 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.