demonstrating that treating the individual as an employee of the Public Health Service for purposes of 42 U.S.C. 233(g) would no longer expose the United States to an unreasonably high degree of risk of loss.

(c) Upon receiving a petition for reinstatement, the initiating official shall determine, in the initiating official's unreviewable discretion, whether the petition makes a prima facie case that no longer would expose the United States to an unreasonably high degree of risk of loss. The initiating official's determination that a petition does not make a prima facie case is not subject to further review.

(d) Upon a prima facie case having been made, an administrative law judge shall be appointed in accordance with 5 U.S.C. 3105 and shall conduct such proceedings pursuant to §§ 15.13 through 15.16 as the administrative law judge deems necessary, in his or her sole discretion, to determine whether the individual has established that treating the individual as an employee of the Public Health Service for purposes of 42 U.S.C. 233(g) would no longer expose the United States to an unreasonably high degree of risk of loss, and shall submit written findings of fact, conclusions of law, and a recommended decision to the adjudicating official pursuant to § 15.16.

(e) On a petition for reinstatement, the adjudicating official shall make the final agency determination, on the basis of the record, findings, conclusions, and recommendations presented by the administrative law judge, which shall include the record from the original determination and any petition for rehearing. All determinations made by the adjudicating official under this rule shall constitute final agency actions.

(f) A determination that an individual is reinstated pursuant to this section shall be distributed in the same manner as provided in § 15.19.

Dated: February 25, 2015.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2015–05027 Filed 3–5–15; 8:45 am]

BILLING CODE 4410–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0528; FRL–9924–04-Region 7]

Approval and Promulgation of Implementation Plans; State of Kansas; Infrastructure SIP Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of Kansas addressing the applicable requirements of Clean Air Act (CAA) section 110 for the 2010 National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide (SO_2), which requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before April 6, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2014–0528, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: kemp.lachala@epa.gov.*
3. *Mail:* Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.
4. *Hand Delivery or Courier:* Deliver your comments to Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2014–0528. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://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 should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219 from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; *telephone number:* (913) 551–7214; *fax number:* (913) 551–7065; *email address: kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we refer to EPA. This section provides additional

information by addressing the following questions:

I. What is a section 110(a)(1) and (2) infrastructure SIP?
II. What are the applicable elements under sections 110(a)(1) and (2)?
III. What is EPA's approach to the review of infrastructure SIP submissions?
IV. What is EPA's evaluation of how the state addressed the relevant elements of sections 110(a)(1) and (2)?
V. What action is EPA proposing?
VI. Statutory and Executive Order Review

I. What is a section 110(a)(1) and (2) infrastructure SIP?

Section 110(a)(1) of the CAA requires, in part, that states make a SIP submission to EPA to implement, maintain and enforce each of the NAAQS promulgated by EPA after reasonable notice and public hearings. Section 110(a)(2) includes a list of specific elements that such infrastructure SIP submissions must address. SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. These SIP submissions are commonly referred to as ''infrastructure'' SIPs.

II. What are the applicable elements under sections 110(a)(1) and (2)?

On June 22, 2010, EPA revised the current 24-hour and annual standards with a new short-term standard based on the 3-year average of the 99th percentile of the yearly distribution of 1-hour daily maximum SO_2 concentrations. The level of the revised SO_2 standard (hereafter the 2010 SO_2 NAAQS) was set at 75 parts per billion (ppb) (75 FR 35519).

For the 2010 SO_2 NAAQS, states typically have met many of the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. Nevertheless, pursuant to section 110(a)(1), states must review and revise, as appropriate, their existing SIPs to ensure that the SIPs are adequate to address the 2010 SO_2 NAAQS. To assist states in meeting this statutory requirement, EPA issued guidance on September 13, 2013 (2013 Guidance), addressing the infrastructure SIP elements required under section 110 (a)(1) and (2) for the 2010 SO_2 NAAQS.[1] EPA will address these elements below under the following headings: (A) Emission limits and other control measures; (B) Ambient air quality monitoring/data system; (C) Program for enforcement of control measures (prevention of significant deterioration)(PSD)), New Source Review for nonattainment areas, and construction and modification of all stationary sources); (D) Interstate and international transport; (E) Adequate authority, resources, implementation, and oversight; (F) Stationary source monitoring system; (G) Emergency authority; (H) Future SIP revisions; (I) Nonattainment areas; (J) Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection; (K) Air quality and modeling/data; (L) Permitting fees; and (M) Consultation/participation by affected local entities.

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

EPA is acting upon the July 15, 2013, SIP submission from Kansas that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 SO_2 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 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.[2] 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. 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.[3] However, section 110(a)(2)(I) which 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

[1] Stephen D. Page, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum to EPA Regional Air Division Directors, Regions I–X, September 13, 2013.

[2] 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.

[3] 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)).

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.[4] 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.[5] 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.[6]

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, therefore 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.[7]

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.[8] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[9] EPA developed the 2013 Guidance document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within the 2013 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.[10] The guidance also

[4] 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.

[5] 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).

[6] 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.

[7] 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.

[8] 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.

[9] ''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.

[10] 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 DC 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 this litigation (which culminated in the Supreme Court's recent decision, 134 S. Ct. 1584), 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.

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 New Source Review (NSR) pollutants, including greenhouse 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 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, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[11] 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).

With respect to element[s] C and J, EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Kansas has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

[11] 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.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply EPA regulations that would require that SIPs 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 Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, EPA has determined the Kansas' SIP is sufficient to satisfy elements C, D(i)(II), and J with respect to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Kansas PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy elements C, (D)(i)(II), and J. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect EPA's proposed approval of Kansas' infrastructure SIP as to the requirements of elements C, D(i)(II), and J.

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.[12] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[13] 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.[14]

IV. What is EPA's evaluation of how the State addressed the relevant elements of sections 110(a)(1) and (2)?

EPA Region 7 received Kansas' infrastructure SIP submission for the 2010 SO_2 standard on July 15, 2013. The SIP submission became complete as a matter of law on January 15, 2014. EPA has reviewed Kansas' infrastructure SIP submission and the applicable statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP. Below is EPA's evaluation of how the state addressed the relevant elements of section 110(a)(2) for the 2010 SO_2 NAAQS.

(A) Emission limits and other control measures: Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters as needed to implement, maintain and enforce each NAAQS.[15]

The State of Kansas' statutes and regulations authorize the Kansas Department of Health and Environment (KDHE) to regulate air quality and implement air quality control regulations. KDHE's statutory authority can be found in chapter 65, article 30 of the Kansas Statutes Annotated (KSA), otherwise known as the Kansas Air Quality Act. KSA section 65–3003 places the responsibility for air quality conservation and control of air pollution with the Secretary of Health and

[12] 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).

[13] 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).

[14] 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).

[15] The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2010 SO_2 NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Environment (''Secretary''). The Secretary in turn administers the Kansas Air Quality Act through the Division of Environment within KDHE. Air pollution is defined in KSA section 65–3002(c) as the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is, or tends significantly to be, injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property, or would contribute to the formation of regional haze.

KSA section 65–3005(a)(1) provides authority to the Secretary to adopt, amend and repeal rules and regulations implementing the Kansas Air Quality Act. It also gives the Secretary the authority to establish ambient air quality standards for the State of Kansas as a whole or for any part thereof. KSA section 65–3005(a)(12). The Secretary has the authority to promulgate rules and regulations to ensure that Kansas is in compliance with the provisions of the Act, in furtherance of a policy to implement laws and regulations consistent with those of the Federal government. KSA section 65–3005(b). The Secretary also has the authority to establish emission control requirements as appropriate to facilitate the accomplishment of the purposes of the Kansas Air Quality Act. KSA section 65–3010(a).

Based upon review of the state's infrastructure SIP submission for the 2010 SO_2 NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Kansas' SIP, EPA believes that the Kansas SIP adequately addresses the requirements of section 110(a)(2)(A) for the 2010 SO_2 NAAQS and is proposing to approve this element of the July 15, 2013, SIP submission.

(B) Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collection and analysis of ambient air quality data, and making these data available to EPA upon request.

To address this element, KSA section 65–3007 provides the enabling authority necessary for Kansas to fulfill the requirements of section 110(a)(2)(B). This provision gives the Secretary the authority to classify air contaminant sources which, in his or her judgment, may cause or contribute to air pollution. Furthermore, the Secretary has the authority to require such air contaminant sources to monitor emissions, operating parameters, ambient impacts of any source emissions, and any other parameters deemed necessary. The Secretary can also require these sources to keep records and make reports consistent with the Kansas Air Quality Act. KSA section 65–3007(b).

Kansas has an air quality monitoring network operated by KDHE and local air quality agencies that collects air quality data that are compiled, analyzed, and reported to EPA. KDHE's Web site contains up-to-date information about air quality monitoring, including a description of the network and information about the monitoring of SO_2. *See, generally, http://www.kdheks.gov/bar/air-monitor/indexMon.html.* KDHE also conducts five-year monitoring network assessments, including the SO_2 monitoring network, as required by 40 CFR 58.10(d). On December 3, 2013, EPA approved Kansas' 2013–2014 Ambient Air Monitoring Network Plan. This plan includes, among other things, the location for the SO_2 monitoring network in Kansas. Specifically, KDHE operates four sulfur dioxide monitors in the state in accordance with the source-oriented sulfur dioxide monitoring requirements of 40 CFR part 58, appendix D, paragraph 4.4.1(a). Data gathered by the monitors is submitted to EPA's Air Quality System, which in turn determines if the network site monitors are in compliance with the NAAQS.

Within KDHE, the Bureau of Air implements these requirements. Along with its other duties, the Monitoring and Planning Section collects air monitoring data, quality assures the results, and reports the data. The data is then used to develop the appropriate regulatory or outreach strategies to reduce air pollution.

Based upon review of the state's infrastructure SIP submission for the 2010 SO_2 NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Kansas' SIP, EPA believes that the Kansas SIP adequately addresses the requirements of section 110(a)(2)(B) for the 2010 SO_2 NAAQS and is proposing to approve this element of the July 15, 2013, SIP submission.

(C) Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources): Section 110(a)(2)(C) requires states to include the following three elements in the SIP: (1) A program providing for enforcement of all SIP measures described in section 110(a)(2)(A); (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (*i.e.,* state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).[16]

(1) *Enforcement of SIP Measures.* With respect to enforcement of requirements of the SIP, KSA section 65–3005(a)(3) gives the Secretary the authority to issue orders, permits and approvals as may be necessary to effectuate the purposes of the Kansas Air Quality Act and enforce the Act by all appropriate administrative and judicial proceedings. Pursuant to KSA section 65–3006, the Secretary also has the authority to enforce rules, regulations and standards to implement the Kansas Air Quality Act and to employ the professional, technical and other staff to effectuate the provisions of the Act. In addition, if the Secretary or the director of the Division of Environment finds that any person has violated any provision of any approval, permit or compliance plan or any provision of the Kansas Air Quality Act or any rule or regulation promulgated thereunder, he or she may issue an order directing the person to take such action as necessary to correct the violation. KSA section 65–3011.

KSA section 65–3018 gives the Secretary or the Director of the Division of Environment the authority to impose a monetary penalty against any person who, among other things, either violates any order or permit issued under the Kansas Air Quality Act, or violates any provision of the Act or rule or regulation promulgated thereunder. Section 65–3028 provides for criminal penalties for knowing violations.

(2) *Minor New Source Review.* Section 110(a)(2)(C) also requires that the SIP include measures to regulate construction and modification of stationary sources to protect the NAAQS. With respect to smaller sources that meet the criteria listed in KAR 28–19–300(b) ''Construction Permits and Approvals,'' Kansas has a SIP-approved permitting program. Any person proposing to conduct a construction or modification at such a source must obtain approval from KDHE prior to commencing construction or modification. If KDHE determines that

[16] As discussed in further detail below, this infrastructure SIP rulemaking will not address the Kansas program for nonattainment area related provisions, since EPA considers evaluation of these provisions to be outside the scope of infrastructure SIP actions.

air contaminant emissions from a source will interfere with attainment or maintenance of the NAAQS, it cannot issue an approval to construct or modify that source (KAR 28–19–301(d) ''Construction Permits and Approvals; Application and Issuance'').

In this action, EPA is proposing to approve Kansas' infrastructure SIP for the 2010 SO_2 standard with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. In this action, EPA is not proposing to approve or disapprove the state's existing minor NSR program to the extent that it is inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element (C) (*e.g.,* 76 FR 41076–76 FR 41079).

(3) *Prevention of Significant Deterioration (PSD) permit program.* Kansas also has a program approved by EPA as meeting the requirements of part C, relating to prevention of significant deterioration of air quality. In order to demonstrate that Kansas has met this sub-element, this PSD program must cover requirements not just for the 2010 SO_2 NAAQS, but for all other regulated NSR pollutants as well.

In a previous action on June 20, 2013, EPA determined that Kansas has a program in place that meets all the PSD requirements related to all required pollutants (78 FR 37126).[17] Therefore, Kansas has adopted all necessary provisions to ensure that its PSD program covers the requirements for the SO_2 NAAQS and all other regulated NSR pollutants.

Based upon review of the state's infrastructure SIP submission for the 2010 SO_2 NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Kansas' SIP, EPA believes that the Kansas SIP adequately addresses the requirements of section 110(a)(2)(C) for the 2010 SO_2 NAAQS and is proposing to approve this element of the July 15, 2013, SIP submission.

(D) Interstate and international transport: Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I); Prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II). Section 110(a)(2)(D)(i)(I) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of any NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality or to protect visibility.

In this notice, we are not proposing to take any actions related to the interstate transport requirements of section 110(a)(2)(D)(i)(I)—prongs 1 and 2. At this time, there is no SIP submission from Kansas relating to 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS pending before the Agency.

With respect to the PSD requirements of section 110(a)(2)(D)(i)(II)—prong 3, EPA notes that Kansas' satisfaction of the applicable infrastructure SIP PSD requirements for attainment/unclassifiable areas of the 2010 SO_2 NAAQS have been detailed in the section addressing section 110(a)(2)(C). EPA also notes that the proposed action in that section related to PSD is consistent with the proposed approval related to PSD for section 110(a)(2)(D)(i)(II).

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II)—prong 4, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2013 Guidance states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, and an approved SIP addressing regional haze.

Kansas meets this requirement through EPA's final approval of Kansas' regional haze plan on December 27, 2011 (76 FR 80754). In this final approval, EPA determined that the Kansas SIP met requirements of the CAA, for states to prevent any future and remedy any existing anthropogenic impairment of visibility in Class I areas caused by emissions of air pollutants located over a wide geographic area. Therefore, EPA is proposing to fully approve this aspect of the submission.

Section 110(a)(2)(D)(ii) also requires that the SIP insure compliance with the applicable requirements of sections 126 and 115 of the CAA, relating to interstate and international pollution abatement, respectively.

Section 126(a) of the CAA requires new or modified sources to notify neighboring states of potential impacts from sources within the state. The Kansas regulations address abatement of the effects of interstate pollution. For example, KAR 28–19–350(k)(2) ''Prevention of Significant Deterioration (PSD) of Air Quality'' requires KDHE, prior to issuing any construction permit for a proposed new major source or major modification, to notify EPA, as well as: Any state or local air pollution control agency having jurisdiction in the air quality control region in which the new or modified installation will be located; the chief executives of the city and county where the source will be located; any comprehensive regional land use planning agency having jurisdiction where the source will be located; and any state, Federal land manager, or Indian governing body whose lands will be affected by emissions from the new source or modification.[18] *See also* KAR 28–19–204 ''General Provisions; Permit Issuance and Modification; Public Participation'' for additional public participation requirements. In addition, no Kansas source or sources have been identified by EPA as having any interstate impacts under section 126 in any pending actions relating to any air pollutant.

Section 115 of the CAA authorizes EPA to require a state to revise its SIP under certain conditions to alleviate international transport into another country. There are no final findings under section 115 of the CAA against Kansas with respect to any air pollutant. Thus, the state's SIP does not need to include any provisions to meet the requirements of section 115.

Based upon review of the state's infrastructure SIP submission for the 2010 SO_2 NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Kansas' SIP, EPA believes that Kansas has the adequate infrastructure needed to address sections 110(a)(2)(D)(i)(II)—Prongs 3 and 4 and 110 (a)(2)(D)(ii) for the 2010 SO_2 NAAQS and is proposing to approve this element of the July 15, 2013, submission.

(E) Adequate authority, resources, implementation, and oversight: Section 110(a)(2)(E) requires that SIPs provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for

[17] For a detailed discussion on EPA's analysis of how Kansas meets the PSD requirements, see EPA's April 17, 2013, proposed approval of Kansas' 1997 and 2006 $PM_{2.5}$ infrastructure SIP (78 FR 22827).

[18] KAR 28–19–16k(b) provides similar requirements for construction permits issued in nonattainment areas.

implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements that the state comply with the requirements relating to state boards, pursuant to section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

(1) Section 110(a)(2)(E)(i) requires states to establish that they have adequate personnel, funding and authority. With respect to adequate authority, we have previously discussed Kansas' statutory and regulatory authority to implement the 2010 SO_2 NAAQS, primarily in the discussion of section 110(a)(2)(A) above. Neither Kansas nor EPA has identified any legal impediments in the state's SIP to implementation of the NAAQS.

With respect to adequate resources, KDHE asserts that it has adequate personnel to implement the SIP. The Kansas statutes provide the Secretary the authority to employ technical, professional and other staff to effectuate the purposes of the Kansas Air Quality Act from funds appropriated and available for these purposes. *See* KSA section 65–3006(b). Within KDHE, the Bureau of Air implements the Kansas Air Quality Act. This Bureau is further divided into the Air Compliance and Enforcement Section, Air Permit Section; the Monitoring and Planning Section; and the Radiation and Asbestos Control Section.

With respect to funding, the Kansas Legislature annually approves funding and personnel resources for KDHE to implement the air program. The annual budget process provides a periodic update that enables KDHE and the local agencies to adjust funding and personnel needs. In addition, the Kansas statutes grant the Secretary authority to establish various fees for sources, to cover any and all parts of administering the provisions of the Kansas Air Quality Act. For example, KSA section 65–3008(f) grants the Secretary authority to fix, charge, and collect fees for construction approvals and permits (and the renewals thereof). KSA section 65–3024 grants the Secretary the authority to establish annual emissions fees. These emission fees, along with any moneys recovered by the state under the provisions of the Kansas Air Quality Act, are deposited into an air quality fee fund in the state treasury. Moneys in the air quality fee fund can only be used for the purpose of administering the Kansas Air Quality Act.

Kansas also uses funds in the non-Title V subaccounts, along with General Revenue funds and EPA grants under, for example, sections 103 and 105 of the Act, to fund the programs. EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement the SIP.

(2) Conflict of interest provisions—section 128. Section 110(a)(2)(E)(ii) requires that each state SIP meet the requirements of section 128, relating to representation on state boards and conflicts of interest by members of such boards. Section 128(a)(1) requires that any board or body which approves permits or enforcement orders under the CAA must have at least a majority of members who represent the public interest and do not derive any ''significant portion'' of their income from persons subject to permits and enforcement orders under the CAA. Section 128(a)(2) requires that members of such a board or body, or the head of an agency with similar powers, adequately disclose any potential conflicts of interest.

On June 20, 2013, EPA approved Kansas' SIP revision addressing the section 128 requirements (78 FR 37126). For a detailed discussion on EPA's analysis of how Kansas meets the section 128 requirements, see EPA's April 17, 2013, proposed approval of Kansas' 1997 and 2006 $PM_{2.5}$ infrastructure SIP (78 FR 22827).

(3) With respect to assurances that the state has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, KSA section 65–3005(a)(8) grants the Secretary authority to encourage local units of government to handle air pollution problems within their own jurisdictions and to provide technical and consultative assistance therefor. The Secretary may also enter into agreements with local units of government to administer all or part of the provisions of the Kansas Air Quality Act in the units' respective jurisdictions. In fact, KSA section 65–3016 allows for cities and/or counties (or combinations thereof) to form local air quality conservation authorities. These authorities will then have the authority to enforce air quality rules and regulations adopted by the Secretary and adopt any additional rules, regulations and standards as needed to maintain satisfactory air quality within their jurisdictions.

At the same time, the Kansas statutes also retain authority in the Secretary to carry out the provisions of the state air pollution control law. KSA section 65–3003 specifically places responsibility for air quality conservation and control of air pollution with the Secretary. The Secretary shall then administer the Kansas Air Quality Act through the Division of Environment. As an example of this retention of authority, KSA section 65–3016 only allows for the formation of local air quality conservation authorities with the approval of the Secretary. In addition, although these authorities can adopt additional air quality rules, regulations and standards, they may only do so if those rules, regulations and standards are in compliance with those set by the Secretary for that area. Currently, KDHE oversees the following local agencies that implement that Kansas Air Quality Act: The City of Wichita Office of Environmental Health, Johnson County Department of Health and Environment, and Unified Government of Wyandotte County–Kansas City, Kansas Public Health Department.

Based upon review of the state's infrastructure SIP submission for the 2010 SO_2 NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Kansas' SIP, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(E) for the 2010 SO_2 NAAQS and is proposing to approve this element of the July 15, 2013, submission.

(F) Stationary source monitoring system: Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. Each SIP shall require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and requires that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

To address this element, KSA section 65–3007 gives the Secretary the authority to classify air contaminant sources which, in his or her judgment, may cause or contribute to air pollution. The Secretary shall require air contaminant emission sources to monitor emissions, operating parameters, ambient impact of any source emissions, and any other parameters deemed necessary.

Furthermore, the Secretary may require these emissions sources to keep records and make reports consistent with the purposes of the Kansas Air Quality Act.

In addition, KAR 28–19–12(A) ''Measurement of Emissions'' states that KDHE may require any person responsible for the operation of an emissions source to make or have tests made to determine the rate of contaminant emissions from the source whenever it has reason to believe that existing emissions exceed limitations specified in the Kansas air quality regulations. At the same time, KDHE may also conduct its own tests of emissions from any source. KAR 28–19–12(B). The Kansas regulations also require that all Class I operating permits include requirements for monitoring of emissions (KAR 28–19–512(a)(9) ''Class I Operating Permits; Permit Content'').

Kansas makes all monitoring reports (as well as compliance plans and compliance certifications) submitted as part of a construction permit or Class I or Class II permit application publicly available. *See* KSA section 65–3015(a); KAR 28–19–204(c)(6) ''General Provisions; Permit Issuance and Modification; Public Participation.'' KDHE uses this information to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with emission regulations and additional EPA requirements. Although the Kansas statutes allow a person to request that records or information reported to KDHE be regarded and treated as confidential on the grounds that it constitutes trade secrets, emission data is specifically excluded from this protection. *See* KSA section 65–3015(b).

Based upon review of the state's infrastructure SIP submission for the 2010 SO_2 NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Kansas' SIP, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(F) for the 2010 SO_2 NAAQS and is proposing to approve this element of the July 15, 2013, submission.

(G) Emergency authority: Section 110(a)(2)(G) requires SIPs to provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment (comparable to the authorities provided in section 303 of the CAA), and to include contingency plans to implement such authorities as necessary.

KSA section 65–3012(a) states that whenever the Secretary receives evidence that emissions from an air pollution source or combination of sources presents an imminent and substantial endangerment to public health or welfare or to the environment, he or she may issue a temporary order directing the owner or operator, or both, to take such steps as necessary to prevent the act or eliminate the practice. Upon issuance of this temporary order, the Secretary may then commence an action in the district court to enjoin these acts or practices.

KAR 28–19–56 ''Episode Criteria'' allows the Secretary to proclaim an air pollution alert, air pollution warning, or air pollution emergency whenever he or she determines that the accumulation of air contaminants at any sampling location has attained levels which could, if such levels are sustained or exceeded, threaten the public health. KAR 28–19–57 ''Emission Reduction Requirements'' imposes restrictions on emission sources in the event one of these three air pollution episode statuses is declared.

Based upon review of the state's infrastructure SIP submissions for the 2010 SO_2 NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Kansas' SIP, EPA believes that the Kansas SIP adequately addresses section 110(a)(2)(G) for the 2010 SO_2 NAAQS and is proposing to approve this element of the July 15, 2013, submission.

(H) Future SIP revisions: Section 110(a)(2)(H) requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

KSA section 65–3005(b) specifically states that it is the policy of the state of Kansas to regulate the air quality of the state and implement laws and regulations that are applied equally and uniformly throughout the state and consistent with that of the Federal government. Therefore, the Secretary has the authority to promulgate rules and regulations to ensure that Kansas is in compliance with the provisions of the Federal CAA. KSA 65–3005(b)(1).

As discussed previously, KSA section 65–3005(a)(1) provides authority to the Secretary to adopt, amend and repeal rules and regulations implementing and consistent with the Kansas Air Quality Act. The Secretary also has the authority to establish ambient air quality standards for the state of Kansas or any part thereof. KSA section 65–3005(a)(12). Therefore, as a whole, the Secretary has the authority to revise rules as necessary to respond to any necessary changes in the NAAQS.

Based upon review of the state's infrastructure SIP submission for the 2010 SO_2 NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Kansas' SIP, EPA believes that Kansas has adequate authority to address section 110(a)(2)(H) for the 2010 SO_2 NAAQS and is proposing to approve this element of the July 15, 2013, submission.

(I) Nonattainment areas: Section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

As noted earlier, EPA does not expect infrastructure SIP submissions to address subsection (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will take action on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D.

(J) Consultation with government officials, public notification, PSD and visibility protection: Section 110(a)(2)(J) requires SIPs to meet the applicable requirements of the following CAA provisions: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection.

(1) With respect to interagency consultation, the SIP should provide a process for consultation with general-purpose local governments, designated organizations of elected officials of local governments, and any Federal Land Manager having authority over Federal land to which the SIP applies. KSA section 65–3005(a)(14) grants the Secretary the authority to advise, consult and cooperate with other agencies of the state, local governments, other states, interstate and interlocal agencies, and the Federal government. Furthermore, as noted earlier in the discussion on section 110(a)(2)(D), Kansas' regulations require that whenever it receives a construction

permit application for a new source or a modification, KDHE must notify state and local air pollution control agencies, as well as regional land use planning agencies and any state, Federal land manager, or Indian governing body whose lands will be affected by emissions from the new source or modification. *See* KAR 28–19–350(k)(2) ''Prevention of Significant Deterioration (PSD) of Air Quality.''

(2) With respect to the requirements for public notification in section 127, the infrastructure SIP should provide citations to regulations in the SIP requiring the air agency to regularly notify the public of instances or areas in which any NAAQS are exceeded; advise the public of the health hazard associated with such exceedances; and enhance public awareness of measures that can prevent such exceedances and of ways in which the public can participate in the regulatory and other efforts to improve air quality.

As discussed previously with element (G), KAR 28–19–56 ''Episode Criteria'' contains provisions that allow the Secretary to proclaim an air pollution alert, air pollution warning, or air pollution emergency status whenever he or she determines that the accumulation of air contaminants at any sampling location has attained levels which could, if such levels are sustained or exceeded, threaten the public health. Any of these emergency situations can also be declared by the Secretary even in the absence of issuance of a high air pollution potential advisory or equivalent advisory from a local weather bureau meteorologist, if deemed necessary to protect the public health. In the event of such an emergency situation, public notification will occur through local weather bureaus.

In addition, information regarding air pollution and related issues is provided on a KDHE Web site, *http://www.kdheks.gov/bar/*. This information includes air quality data, information regarding the NAAQS, health effects of poor air quality, and links to the Kansas Air Quality Monitoring Network. KDHE also has an ''Outreach and Education'' Web page (*http://www.kdheks.gov/bar/air_outreach/air_quality_edu.htm*) with information on how individuals can take measures to reduce emissions and improve air quality in daily activities.

(3) With respect to the applicable requirements of part C of the CAA, relating to PSD of air quality and visibility protection, as noted in above under element (C), the Kansas SIP meets the PSD requirements, incorporating the Federal rule by reference. With respect to the visibility component of section 110(a)(2)(J), EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. However, when EPA establishes or revises a NAAQS, these visibility and regional haze requirements under part C do not change. EPA believes that there are no new visibility protection requirements under part C as a result of a revised NAAQS. Therefore, there are no newly applicable visibility protection obligations pursuant to element J after the promulgation of a new or revised NAAQS.

Nevertheless, as noted above in section D, EPA has already approved Kansas' Regional Haze Plan and determined that it met the CAA requirements for preventing future and remedying existing impairment of visibility caused by air pollutants.

Based upon review of the state's infrastructure SIP submission for the 2010 SO_2 NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Kansas' SIP, EPA believes that Kansas has met the applicable requirements of section 110(a)(2)(J) for the 2010 SO_2 NAAQS in the state and is therefore proposing to approve this element of the July 15, 2013, submission.

(K) Air quality and modeling/data: Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

Kansas has authority to conduct air quality modeling and report the results of such modeling to EPA. KSA section 65–3005(a)(9) gives the Secretary the authority to encourage and conduct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control. As an example of regulatory authority to perform modeling for purposes of determining NAAQS compliance, the regulations at KAR 28–19–350 ''Prevention of Significant Deterioration (PSD) of Air Quality'' incorporate EPA modeling guidance in 40 CFR part 51, appendix W for the purposes of demonstrating compliance or non-compliance with a NAAQS.

The Kansas statutes and regulations also give KDHE the authority to require that modeling data be submitted for analysis. KSA section 65–3007(b) grants the Secretary the authority to require air contaminant emission sources to monitor emissions, operating parameters, ambient impact of any source emissions or any other parameters deemed necessary. The Secretary may also require these sources to keep records and make reports consistent with the purposes of the Kansas Air Quality Act. These reports could include information as may be required by the Secretary concerning the location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such information as is relevant to air pollution and available or reasonably capable of being assembled. KSA section 65–3007(c).

Based upon review of the state's infrastructure SIP submission for the 2010 SO_2 NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Kansas' SIP, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(K) for the 2010 SO_2 NAAQS and is proposing to approve this element of the July 15, 2013, submission.

(L) Permitting Fees: Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

KSA section 65–3008(f) allows the Secretary to fix, charge, and collect fees for approvals and permits (and the renewals thereof). KSA section 65–3024 grants the Secretary the authority to establish annual emissions fees. Fees from the construction permits and approvals are deposited into the Kansas state treasury and credited to the state general fund. Emissions fees are deposited into an air quality fee fund in the Kansas state treasury. Moneys in the air quality fee fund can only be used for the purpose of administering the Kansas Air Quality Act.

Kansas' Title V program, found at KAR 28–19–500 to 28–19–564, was approved by EPA on January 30, 1996 (61 FR 2938). EPA reviews the Kansas Title V program, including Title V fee structure, separately from this proposed action. Because the Title V program and associated fees legally are not part of the SIP, the infrastructure SIP action we are proposing today does not preclude EPA

from taking future action regarding Kansas' Title V program.

Based upon review of the state's infrastructure SIP submission for the 2010 SO_2 NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Kansas' SIP, EPA believes that the requirements of section 110(a)(2)(L) for the 2010 SO_2 NAAQS are met and is proposing to approve this element of the July 15, 2013, submission.

(M) Consultation/participation by affected local entities: Section 110(a)(2)(M) requires SIPs to provide for consultation and participation by local political subdivisions affected by the SIP.

KSA section 65–3005(a)(8)(A) gives the Secretary the authority to encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis and to provide technical and consultative assistance therefor. The Secretary may also enter into agreements with local units of government to administer all or part of the provisions on the Kansas Air Quality Act in the units' respective jurisdiction. The Secretary also has the authority to advise, consult, and cooperate with local governments. KSA section 65–3005(a)(14). He or she may enter into contracts and agreements with local governments as is necessary to accomplish the goals of the Kansas Air Quality Act. KSA section 65–3005(a)(16).

Currently, KDHE's Bureau of Air has signed state and/or local agreements with the Department of Air Quality from the Unified Government of Wyandotte County—Kansas City, Kansas; the Wichita Office of Environmental Health; the Johnson County Department of Health and Environment; and the Mid-America Regional Council. These agreements establish formal partnerships between the Bureau of Air and these local agencies to work together to develop and annually update strategic goals, objectives and strategies for reducing emissions and improving air quality.

In addition, as previously noted in the discussion about section 110(a)(2)(J), Kansas' statutes and regulations require that KDHE consult with local political subdivisions for the purposes of carrying out its air pollution control responsibilities.

Based upon review of the state's infrastructure SIP submission for the 2010 SO_2 NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Kansas' SIP, EPA believes that Kansas has the adequate infrastructure needed to address section 110(a)(2)(M) for the 2010 SO_2 NAAQS and is proposing to approve this element of the July 15, 2013, submission.

V. What action is EPA proposing?

EPA is proposing to approve the infrastructure SIP submissions from Kansas which address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2010 SO_2 NAAQS. Specifically, EPA is proposing to approve the following infrastructure elements, or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). As discussed in each applicable section of this rulemaking, EPA is not proposing action on section 110(a)(2)(D)(i)(I), and section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D.

Based upon review of the state's infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Kansas' SIP, EPA believes that Kansas has the infrastructure to address all applicable required elements of sections 110(a)(1) and (2) (except otherwise noted) to ensure that the 2010 SO_2 NAAQS are implemented in the state.

We are hereby soliciting comment on this proposed action. Final rulemaking will occur after consideration of any comments.

VI. Statutory and Executive Order Review

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the EPA approved Kansas Nonregulatory Provision for Section 110(a)(2) Infrastructure Requirements for the 2010 SO_2 NAAQS described in the proposed amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

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

- Is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur Dioxide, Reporting and recordkeeping requirements.

Dated: February 24, 2015.

Karl Brooks,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart R—Kansas

■ 2. In § 52.870(e) the table is amended by adding entry (40) in numerical order to read as follows:

§ 52.870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic area or Nonattainment area	State submittal date	EPA Approval date	Explanation
*	*	*	*	*
(40) Section 110(a)(2) Infrastructure Requirements for the 2010 SO_2 NAAQS.	Statewide	3/19/2013	3/6/2015, [Insert **Federal Register** citation].	This action addresses the following CAA elements 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2015–05328 Filed 3–5–15; 08:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 15, 90, and 95

[ET Docket Nos. 15–26, 11–90, 10–28, RM–11555, RM–11666, and WT Docket No. 11–202; FCC 15–16]

Operation of Radar Systems in the 76–81 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to authorize radar applications in the 76–81 GHz band. The Commission seeks to develop a flexible and streamlined regulatory framework that will encourage efficient, innovative uses of the spectrum and to allow various services to operate on an interference-protected basis. In doing so, it further seeks to adopt service rules that will allow for the deployment of the various radar applications in this band, both within and outside the U.S. The Commission takes this action in response to a petition for rulemaking filed by Robert Bosch, LLC (Bosch) and two petitions for reconsideration of the 2012 *Vehicular Radar R&O.*

DATES: Comments must be filed on or before April 6, 2015, and reply comments must be filed on or before April 20, 2015.

FOR FURTHER INFORMATION CONTACT: Aamer Zain, Office of Engineering and Technology, (202) 418–2437, email: *aamer.zain@fcc.gov,* TTY (202) 418–2989.

ADDRESSES: You may submit comments, identified by ET Docket No. 15–26, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking and Reconsideration Order,* ET Docket No. 15–26, RM–11555, RM–11666, ET Docket Nos. 11–90, 10–28 and WT Docket No. 11–202; FCC 15–16, adopted February 3, 2015, and released February 5, 2015. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.