ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0472; FRL–9946–20–Region 9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements for Nitrogen Dioxide and Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove the Arizona State Implementation Plan (SIP) as meeting the requirements of Sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA or the Act) for the implementation, maintenance, and enforcement of the 2010 nitrogen dioxide (NO_2) and 2010 sulfur dioxide (SO_2) national ambient air quality standards (NAAQS). CAA section 110(a)(1) requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, and that EPA act on such SIPs. We refer to such SIPs as ''infrastructure'' SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS including, but not limited to, legal authority, regulatory structure, resources, permit programs, monitoring, and modeling necessary to assure attainment and maintenance of the standards. In addition to our proposed partial approval and partial disapproval of Arizona's infrastructure SIP, we are proposing to reclassify one region of the state for SO_2 emergency episode planning. EPA is also proposing to approve Arizona Revised Statutes related to conducting air quality modeling and providing modeling data to EPA into the Arizona SIP. We are taking comments on this proposal and plan to follow with a final action.

DATES: Written comments must be received on or before June 20, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA–R09–OAR–2015–0472] at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3856, *kelly.thomasp@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA.

Table of Contents

I. EPA's Approach to the Review of Infrastructure SIP Submissions

EPA is acting upon several SIP submittals from Arizona that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 NO_2 and 2010 SO_2 NAAQS. The requirement for states to make a SIP submittal of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submittals ''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 submittals are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submittals, and the requirement to make the submittals 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'' submittal must address.

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

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

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 submittals for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP

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

submittal 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.[2] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submittals to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submittal of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[3] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submittal.

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 submittal, and whether EPA must act upon such SIP submittal 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 submittals separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submittals to meet the infrastructure SIP requirements, EPA can elect to act on such submittals either individually or in a larger combined action.[4] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submittal for a given NAAQS without concurrent action on the entire submittal. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submittal.[5]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submittal 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 submittals for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submittal for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submittal to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[6]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submittals required under the CAA. Therefore, as with infrastructure SIP submittals, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submittals. For example, section 172(c)(7) requires that attainment plan SIP submittals required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submittals 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 submittals required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the air quality prevention of significant deterioration (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 submittal 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 submittal. In other words, EPA assumes that Congress could not have intended that each and every SIP submittal, 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 submittals 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 submittals for particular elements.[7] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Infrastructure SIP Guidance).[8] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this

[2] *See, e.g.,* Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule. 70 FR 25162, at 25163–25165, May 12, 2005 (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

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

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

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

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

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

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

guidance, EPA describes the duty of states to make infrastructure SIP submittals 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 submittals.[9] 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 submittals need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submittal 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 submittals. 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 submittals to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Infrastructure SIP 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 submittals 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 submittals 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, title I of the Act and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and regulated 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 Code of Federal Regulations (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 submittal 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 a SIP-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submittal, 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 submittal 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 submittal without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submittal even if it is aware of such existing provisions.[10] It is important to note that EPA's approval of a state's infrastructure SIP submittal 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 submittals is to identify the CAA requirements that are logically applicable to that submittal. EPA believes that this approach to the review of a particular infrastructure SIP submittal 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 submittal. 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 Infrastructure SIP 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 submittal for any future new or revised NAAQS

[9] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submittals to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Circuit 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.

[10] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submittal 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.

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.[11] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submittals.[12] Significantly, EPA's determination that an action on a state's infrastructure SIP submittal 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 submittal, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[13]

[11] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 76 FR 21639, April 18, 2011.

[12] EPA has used this authority to correct errors in past actions on SIP submittals 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).

[13] See, *e.g.,* EPA's disapproval of a SIP submittal 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).

II. Background

A. Statutory Framework

Section 110(a)(1) of the CAA requires states to make a SIP submission within 3 years after the promulgation of a new or revised primary NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must include. Many of the section 110(a)(2) SIP elements relate to the general information and authorities that constitute the ''infrastructure'' of a state's air quality management program and SIP submittals that address these requirements are referred to as ''infrastructure SIPs.'' These infrastructure SIP elements required by section 110(a)(2) are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate and international pollution abatement.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, PSD, and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: Section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment NSR), and Section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

B. Regulatory Background

In 2010 EPA promulgated revised NAAQS for NO_2 and SO_2, triggering a requirement for states to submit infrastructure SIPs. The NAAQS addressed by this infrastructure SIP proposal include the following:

- 2010 NO_2 NAAQS, which revised the primary 1971 NO_2 annual standard of 53 parts per billion (ppb) by supplementing it with a new 1-hour average NO_2 standard of 100 ppb, and retained the secondary annual standard of 53 ppb.[14]
- 2010 SO_2 NAAQS, which established a new 1-hour average SO_2 standard of 75 ppb, retained the secondary 3-hour average SO_2 standard of 500 ppb, and established a mechanism for revoking the primary 1971 annual and 24-hour SO_2 standards.[15]

C. Changes to the Application of PSD Permitting Requirements With GHGs

With respect to Elements (C) and (J), EPA interprets the Clean Air Act 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.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions.[16] The Supreme Court said that 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 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, EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that

[14] 75 FR 6474, February 9, 2010. The annual NO 2 standard of 0.053 ppm is listed in ppb for ease of comparison with the new 1-hour standard.

[15] 75 FR 35520, June 22, 2010. The annual SO 2 standard of 0.5 ppm is listed in ppb for ease of comparison with the new 1-hour standard.

[16] *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427.

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 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.

III. State Submittals

The Arizona Department of Environmental Quality (ADEQ) has submitted several infrastructure SIP submittals pursuant to EPA's promulgation of specific NAAQS, including:

- January 18, 2013—''Arizona State Implementation Plan Revision under the Clean Air Act Section 110(a)(1) and (2); 2010 NO_2 NAAQS.'' (2013 NO_2 I–SIP Submittal)
- July 23, 2013—''Arizona State Implementation Plan Revision under the Clean Air Act Section 110(a)(1) and (2); Implementation of the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality.'' (2013 SO_2 I–SIP Submittal)
- December 3, 2015—''Arizona State Implementation Plan Revisions for 2008 Ozone and 2010 Nitrogen Dioxide NAAQS under Clean Air Act Section 110(a)(2)(D) and Revision for All Previous and Future NAAQS under CAA Section 11(a)(2)(K).'' (2015 Submittal)

We find that these submittals meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102. We are proposing to act on all of these submittals, except the part of the 2015 Submittal addressing the 2008 ozone standard which will be acted on separately. The submittals collectively address the infrastructure SIP requirements for the NO_2 and SO_2 NAAQS as described by this proposed rule. We refer to them collectively herein as ''Arizona's Infrastructure SIP Submittals.''

IV. EPA's Evaluation and Proposed Action

A. Proposed Approvals and Partial Approvals

We have evaluated Arizona's Infrastructure SIP Submittals and the existing provisions of the Arizona SIP for compliance with the infrastructure SIP requirements (or ''elements'') of CAA section 110(a)(2) and applicable regulations in 40 CFR part 51 (''Requirements for Preparation, Adoption, and Submittal of State Implementation Plans''). The Technical Support Document (TSD), which is available in the docket to this action, includes our evaluation for these infrastructure SIP elements, as well as our evaluation of various statutory and regulatory provisions identified and submitted by Arizona. For some elements, our analysis refers to older TSDs for prior NAAQS, which have also been included in the docket.

Based upon this analysis, we propose to approve the 2010 NO_2, and 2010 SO_2 Arizona Infrastructure SIP with respect to the following Clean Air Act requirements:

- 110(a)(2)(A): Emission limits and other control measures (all jurisdictions, both pollutants).
- 110(a)(2)(B): Ambient air quality monitoring/data system (all jurisdictions, both pollutants).
- 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new stationary sources (ADEQ and Pinal County for both pollutants).
- 110(a)(2)(D) (in part, see below): Interstate Pollution Transport.
  - 110(a)(2)(D)(i)(I)(in part)—significant contribution to nonattainment, or prongs 1 and 2 (all jurisdictions for the NO_2 NAAQS).
  - 110(a)(2)(D)(i)(I) (in part)—interference with maintenance, or prong 3 (ADEQ and Pinal County for both pollutants).
  - 110(a)(2)(D)(ii) (in part)—interstate pollution abatement § 126 (ADEQ and Pinal County for both pollutants) and international air pollution § 115 (all jurisdictions, both pollutants).
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies (all jurisdictions, both pollutants).
- 110(a)(2)(F): Stationary solderurce monitoring and reporting (all jurisdictions, both pollutants).
- 110(a)(2)(G): Emergency episodes (all jurisdictions, both pollutants).
- 110(a)(2)(H): SIP revisions (all jurisdictions, both pollutants).
- 110(a)(2)(J) (in part): Consultation with government officials, § 121 (all jurisdictions, both pollutants); public notification of exceedances, § 127 (all jurisdictions, both pollutants); and prevention of significant deterioration (PSD) and visibility protection (ADEQ and Pinal County, both pollutants).
- 110(a)(2)(K): Air quality modeling and submission of modeling data (all jurisdictions, both pollutants).
- 110(a)(2)(L): Permitting fees (all jurisdictions, both pollutants).
- 110(a)(2)(M): Consultation/participation by affected local entities (all jurisdictions, both pollutants).

EPA is taking no action on Section 110(a)(2)(D)(i)(I) prongs 1 and 2 for the 2010 SO_2 NAAQS.

B. Proposed Partial Disapprovals

EPA proposes to disapprove Arizona's NO_2 and SO_2 Infrastructure SIP Submittals with respect to the following infrastructure SIP requirements:

- 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources (Maricopa County and Pima County, both pollutants).
- 110(a)(2)(D) (in part, see below): Interstate pollution transport,
  - 110(a)(2)(D)(i)(II) (in part)—interference with maintenance, or prong 3 (Maricopa County and Pima County, both pollutants).
  - 110(a)(2)(D)(i)(II)—visibility transport or prong 4 (all jurisdictions, both pollutants).
  - 110(a)(2)(D)(ii) (in part)—interstate pollution abatement § 126 (Maricopa County and Pima County, both pollutants).
- 110(a)(2)(J) (in part): PSD and visibility protection (Maricopa County and Pima County, both pollutants)

As explained more fully in our TSD, we are proposing to disapprove the Maricopa County and Pima County portions of Arizona's Infrastructure Submittals with respect to the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and the PSD requirements of 110(a)(2)(J). The Arizona SIP does not fully satisfy the statutory and regulatory requirements for PSD permit programs under part C, title I of the Act, because Maricopa County and Pima County currently implement the Federal PSD program in 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with EPA. Accordingly, although the Arizona SIP remains

deficient with respect to PSD requirements in both the Maricopa County and Pima County portions of the SIP, these deficiencies are adequately addressed in both areas by the federal PSD program and do not create new FIP obligations.

We are also proposing to disapprove all jurisdictions in Arizona for 110(a)(2)(D)(i)(II)—protecting visibility from interstate transport or prong 4. Because Arizona relies on a FIP to control sources under the Regional Haze Rule, they do not meet the requirements of this portion of 110(a)(2)(D) for NO_2 and SO_2. However, because a FIP is already in place to meet the requirements, no additional FIP obligation is triggered by our disapproval of this portion of Arizona's infrastructure SIP. EPA will continue to work with Arizona to incorporate FIP emission limits and control technologies into the state SIP.

C. Proposed Approval of Arizona Revised Statutes Into the State SIP

Included in ADEQ's 2015 Submittal was a request to approve Arizona Revised Statutes (ARS) § 49–104(A)(3) and (B)(1) into the state SIP. Arizona has requested that these statutes be included in order to meet the air quality modeling and data submission requirements of 110(a)(2)(K) for the 2010 NO_2 and 2010 SO_2 NAAQS, and past and future NAAQS, including previous Infrastructure SIP disapprovals for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 ozone, and 2008 lead NAAQS.

110(a)(2)(K) requires states to provide for the performance of air quality modeling and the submission of air quality modeling to EPA upon request. On November 5, 2012, EPA disapproved 110(a)(2)(K) with respect to ADEQ's submittals for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS (77 FR 66398). EPA again disapproved this I–SIP element for the 2008 Pb and 2008 O_3 NAAQS on July 14, 2015 (80 FR 40906). EPA disapproved those submissions because ADEQ, Pima, Pinal, and Maricopa Counties did not submit adequate provisions or narrative information related to the 110(a)(2)(K) requirements.

EPA has reviewed the SIP approved provisions, narrative information, and ARS §§ 49–104(A)(3) and (B)(1) contained within the 2015 Submittal. EPA is proposing to approve 110(a)(2)(K) as described in part A of this section, and detailed further in the docket for this action, based upon that review. EPA is also proposing to approve ARS §§ 49–104(A)(3) and (B)(1) into the state SIP. If approval of these statutes into the Arizona SIP is finalized, previous disapprovals for this element, found at 77 FR 66398 and 80 FR 40906, will be corrected.

D. Proposed Reclassification for Emergency Episode Planning

The priority thresholds for classification of air quality control regions are listed in 40 CFR 51.150 while the specific classifications of air quality control regions in Arizona are listed at 40 CFR 52.121. Consistent with the provisions of 40 CFR 51.153, reclassification of an air quality control region must rely on the most recent three years of air quality data. Regions classified Priority I, IA, or II are required to have SIP-approved emergency episode contingency plans, while those classified Priority III are not required to have plans.[17] We interpret 40 CFR 51.153 as establishing the means for states to review air quality data and request a higher or lower classification for any given region and as providing the regulatory basis for EPA to reclassify such regions, as appropriate, under the authorities of CAA sections 110(a)(2)(G) and 301(a)(1).

For SO_2, the Pima Intrastate region is classified as Priority II while the Central Arizona and Southeast Arizona Intrastate regions are classified as Priority IA. All other areas of the state are Priority III. After reviewing Arizona's 2013–2015 air quality data for the Pima air quality control region (AQCR), we are proposing to reclassify this region from Priority II to priority III, thus relieving the AQCR of the emergency episode plan requirement for the 2010 SO_2 NAAQS.

The classification thresholds for SO_2 are unique in that thresholds are prescribed for three different averaging periods. The thresholds and ranges for Priority II classification are as follows:

- 3-hour: Greater than 0.5 ppm,
- 24-hour: 0.10–0.17 ppm, and
- Annual arithmetic mean: 0.02–0.04 ppm.

Areas with ambient air concentrations that are below the Priority II threshold are classified as Priority III. There is one SO_2 monitor within the Pima Intrastate region, located in Tucson and operated and maintained by Pima County. The highest SO_2 levels at the Tucson monitor were 1.1 ppb (.0011 ppm) for the 24-hour average and .24 ppb (.00024 ppm) for the annual arithmetic mean. Both occurred in 2013. In addition, the highest 1-hour SO_2 concentration at the Tucson monitor during this period was 9.6 ppb (.0096 ppm), which occurred in 2014. Monitored levels in 2015 were even lower than the previous two years. The highest 1 hour level was 5.1 ppb (.0051 ppm) and the annual arithmetic mean was .16 ppb (.00016 ppm) While there are no 1-hour SO_2 classification thresholds in 40 CFR 51.150(b), by definition these concentrations reinforce the fact that 3-hour and 24-hour levels have not exceeded the respective Priority II classification thresholds because they are lower than such thresholds.

Thus, we propose to reclassify the Pima Intrastate AQCR to Priority III for SO_2. Should we finalize this reclassification, the Pima Intrastate region would no longer be required to have an emergency episode contingency plan in place for SO_2.

E. Request for Public Comments

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. We will accept comments from the public on this proposal for the next 30 days. We will consider these comments before taking final action.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law.

[17] 40 CFR 51.151 and 51.152.

Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Approval and promulgation of implementation plans, Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, and Sulfur dioxide.

Dated: April 29, 2016.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2016–10985 Filed 5–18–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2013–0696; FRL–9944–28–OAR]

RIN 2060–AS86

Technical Amendments to Performance Specification 18 and Procedure 6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to make several minor technical amendments to the performance specifications and test procedures for hydrogen chloride (HCl) continuous emission monitoring systems (CEMS). The EPA is also proposing to make several minor amendments to the quality assurance (QA) procedures for HCl CEMS used for compliance determination at stationary sources. The performance specification (Performance Specification 18) and the QA procedures (Procedure 6) were published in the **Federal Register** on July 7, 2015. These proposed amendments make several minor corrections and clarify several aspects of these regulations. In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is amending Performance Specification 18 and Procedure 6 as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: *Comments:* Written comments must be received by July 5, 2016.

Public Hearing. The EPA will hold a public hearing on this rule if requested. Requests for a hearing must be made by May 24, 2016. Requests for a hearing should be made to Ms. Candace Sorrell via email at *sorrell.candace@epa.gov* or by phone at (919) 541–1064. If a hearing is requested, it will be held on June 3, 2016 at the EPA facility in Research Triangle Park, NC.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0696, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

All documents in the docket are listed on the *https://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Ave. NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Sorrell, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division,