(g) Revision of Airplane Flight Manual (AFM)

Within 14 days after the effective date of this AD, revise the Operating Limitations section of the FAA-approved AFM to include the information in figure 1 to paragraph (g) of this AD. This may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

FIGURE 1 TO PARAGRAPH (G) OF THIS AD–AFM REVISION

Unless approved by the Manager of the Seattle Aircraft Certification Office, the carriage of the following payloads is prohibited:
1) Intermodal containers nominally sized at 20 feet long, 8 feet wide, and 8.5 feet tall that are not concentrically loaded on a pallet and restrained to the aircraft in accordance with the FAA-approved Weight and Balance Manual or Supplement.
2) ISO 668-1CC containers that are not concentrically loaded on a pallet and restrained to the aircraft in accordance with the FAA-approved Weight and Balance Manual or Supplement.
Note: Both payloads 1 and 2 may be concentrically loaded on a pallet and netted in accordance with the FAA-approved Weight and Balance Manual and then loaded in the center of the airplane and restrained to the airplane by the approved center loaded cargo restraint system or restrained directly to the airplane, both as defined in the FAA-approved Weight and Balance Manual.

(h) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed if any intermodal container prohibited as specified in figure 1 to paragraph (g) of this AD is on board. For special flight permits, carriage of freight is not allowed.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Steven C. Fox, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6425; fax: 425–917–6590; email: *steven.fox@faa.gov.*

Issued in Renton, Washington, on November 21, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–28303 Filed 11–28–14; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0725, FRL–9919–95–Region–8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of South Dakota to demonstrate the State meets infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for particulate matter (PM) on July 18, 1997 and October 17, 2006; lead (Pb) on October 15, 2008; ozone on March 12, 2008; and nitrogen dioxide (NO_2) on January 22, 2010. EPA is also proposing to approve SIP revisions the State submitted updating the Prevention of Significant Deterioration (PSD) program and provisions regarding state boards. Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA.

DATES: Written comments must be received on or before December 31, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0725, by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2011–0725. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to

technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to section I, General Information, of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6563, *fulton.abby@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The word *Administrator* means or refers to the Administrator of the U.S. Environmental Protection Agency.

(ii) The initials *AERR* mean or refer to Air Emissions Reporting Rule.

(iii) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(iv) The initials *AMNP* mean or refer to Air Monitoring Network Plan.

(v) The initials *ARSD* mean or refer to the Administrative Rules of South Dakota.

(vi) The initials *BACT* mean or refer to Best Available Control Technology.

(vii) The initials *BME* mean or refer to Board of Minerals and Environment.

(viii) The initials *CAIR* mean or refer to the Clean Air Interstate Rule.

(ix) The initials *CBI* mean or refer to confidential business information.

(x) The initials *CSAPR* mean or refer to the Cross-State Air Pollution Rule.

(xi) The words or initials *Department* or *DENR* mean or refer to the Department of Environment and Natural Resources.

(xii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(xiii) The initials *FRM* mean or refer to Federal Reference Method.

(xiv) The initials *GHG* mean or refer to greenhouse gases.

(xv) The initials *NAAQS* mean or refer to national ambient air quality standards.

(xvi) The initials *NEI* mean or refer to the National Emissions Inventory.

(xvii) The initials NO_2 mean or refer to nitrogen dioxide. The 2010 NO_2 NAAQS is expressed as the three year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations.

(xviii) The initials *NSR* mean or refer to new source review.

(xix) The initials *Pb* mean or refer to primary and secondary lead less than or equal to 0.15 micrograms per cubic meter.

(xx) The initials *PM* mean or refer to particulate matter.

(xxi) The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).

(xxii) The initials *ppb* mean or refer to parts per billion.

(xxiii) The initials *ppm* mean or refer to parts per million.

(xxiv) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(xxv) The initials *SDCL* mean or refer to South Dakota Codified Laws.

(xxvi) The initials *SILs* mean or refer to significant impact level.

(xxvii) The initials *SIP* mean or refer to State Implementation Plan.

(xxviii) The initials *SLAMS* mean or refer to State and Local Air Monitoring Stations.

(xxix) The initials *SMCs* mean or refer to significant monitoring concentrations.

(xxx) The initials *SSM* mean or refer to start-up, shutdown, or malfunction.

(xxxi) The word *State* means or refers to the State of South Dakota.

(xxxii) The initials $\mu g/m^3$ mean or refer to micrograms per cubic meter.

Table of Contents

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On July 18, 1997, EPA promulgated a new 24-hour and annual NAAQS for fine particulate matter ($PM_{2.5}$) (62 FR 38652). More recently, on October 17, 2006, EPA revised the standards for

$PM_{2.5}$, tightening the 24-hour $PM_{2.5}$ standard from 65 micrograms per cubic meter (μg/m³) to 35μg/m³, and retaining the annual $PM_{2.5}$ standard at 15 μg/m³ (71 FR 61144). On March 12, 2008, EPA promulgated a new NAAQS for ozone, revising the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). Subsequently, on October 15, 2008, EPA revised the level of the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter (μg/m³) to 0.15 μg/m³ (73 FR 66964). On January 22, 2010, EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb) while retaining the annual standard of 53 ppb. The secondary NO_2 NAAQS remains unchanged at 53 ppb (75 FR 6474, Feb. 9, 2010).

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for PM, ozone, Pb, and NO_2 already meet those requirements. EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 Memo), followed by the October 14, 2011, ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (2011 Memo). Most recently, EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' on September 13, 2013 (2013 Memo).

III. What is the scope of this Rulemaking?

EPA is acting upon the SIP submissions from South Dakota that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the1997 and 2006 $PM_{2.5}$, 2008 ozone, 2008 Pb, and 2010 NO_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 (NSR) permit program submissions to address the permit requirements of CAA, title I, part D.

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

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the CAA, which specifically address nonattainment SIP requirements.[2] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[3] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within 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

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

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

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

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

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[6]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires 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.[7] EPA's 2013 Memo was developed to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[8] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Memo 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

[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, Jan. 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 p.m.2.5 NAAQS,'' (78 FR 4337, Jan. 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 submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[8] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including 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 (SSM) that may be contrary to the CAA and EPA's policies addressing such excess emissions; (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, Dec. 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.[9] 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, the 2013 Memo gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes 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.[10] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[11] 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

[9] 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.

[10] 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.

[11] 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, Dec. 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, Nov. 16, 2004 (corrections to California SIP); and 74 FR 57051, Nov. 3, 2009 (corrections to Arizona and Nevada SIPs).

such deficiency in a subsequent action.[12]

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

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

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

A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (1) Section 110(a)(2)(C) to the extent it refers to permit programs (known as ''nonattainment NSR'') required under part D, and (2) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I). Furthermore, EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title 1 of the CAA are not changed by a new NAAQS.

V. How did South Dakota address the infrastructure elements of Sections 110(a)(1) and (2)?

The South Dakota Department of Environment and Natural Resources (DENR) submitted certifications of South Dakota's infrastructure SIP for the 1997 and 2006 $PM_{2.5}$ NAAQS on May 20, 2008, and March 4, 2011, respectively; the 2008 Pb NAAQS on October 10, 2012; the 2008 ozone NAAQS on May 21, 2013; and the 2010 NO_2 NAAQS October 23, 2013. South Dakota's infrastructure certifications demonstrate how the State, where applicable, has plans in place that meet the requirements of section 110 for the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. These plans reference the current Administrative Rules of South Dakota (ARSD) and South Dakota Codified Laws (SDCL). These submittals are available within the electronic docket for today's proposed action at *www.regulations.gov.* The ARSD and SDCL referenced in the submittals are publicly available at *http://legis.sd.gov/rules/RulesList.aspx* and *http://legis.sd.gov/Statutes/Codified_Laws/default.aspx.* South Dakota's SIP, air pollution control regulations and statutes that have been previously approved by EPA and incorporated into the South Dakota SIP can be found at 40 CFR 52.2170.

VI. Analysis of the State Submittals

1. Emission limits and other control measures: Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

Multiple SIP-approved State air quality regulations within the ARSD and cited in South Dakota's certifications provide enforceable emission limitations and other control measures, means of techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS, subject to the following clarifications.

First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. Furthermore, South Dakota has no areas designated as nonattainment for the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. South Dakota's certifications (contained within this docket) generally listed provisions within its SIP which regulate pollutants through various programs, including major and minor source permit programs. This suffices, in the case of South Dakota, to meet the requirements of section 110(a)(2)(A) for the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

Second, as previously discussed, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing state provision with regard to excess emissions during SSM of operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance[13] and the agency is addressing such state regulations separately (78 FR 12460, Feb. 22, 2013).

2. Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to ''(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon

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

[13] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to EPA Air Division Directors, ''State Implementation Plans (SIPs): Policy Regarding Emissions During Malfunctions, Startup, and Shutdown.'' (September 20, 1999).

request, make such data available to the Administrator.''

Under ARSD 74:36:02, the DENR operates a network of air monitoring sites. EPA approved South Dakota's DENR 2013 Ambient Air Monitoring Network Plan (AMNP) on December 31, 2013 [14]. The State of South Dakota submits data to EPA's Air Quality System database in accordance with the deadlines in 40 CFR 58.16. South Dakota's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B) for the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

3. Program for enforcement of control measures: Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure NAAQS are achieved, including a permit program as required in parts C and D.

To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 1997 and 2006 $PM_{2.5}$, 2008 ozone, 2008 Pb, and 2010 NO_2 NAAQS. As explained elsewhere in this action, EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

PSD Requirements

With respect to elements (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. South Dakota has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

South Dakota implements the PSD program by, for the most part, incorporating by reference the federal PSD program as it existed on a specific date. The State periodically updates the PSD program by revising the date of incorporation by reference and submitting the change as a SIP revision. As a result, the SIP revisions generally reflect changes to PSD requirements that EPA has promulgated prior to the revised date of incorporation by reference.

On June 30, 2011, we approved a revision to the South Dakota PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated in 2005 (76 FR 43912, July 22, 2011). As a result, the approved South Dakota PSD program meets current requirements for ozone.

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 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 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.

At present, EPA has determined that South Dakota's 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 South Dakota 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 South Dakota's infrastructure SIP as to the requirements of elements (C), (D)(i)(II), and (J).

Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, EPA promulgated the rule, ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321) and on October 20, 2010, EPA promulgated the rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). EPA regards adoption of these $PM_{2.5}$ rules as a necessary requirement when assessing a PSD program for the purposes of element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of

[14] Currently ambient air monitoring for lead is not conducted or planned because past monitoring and past and current emissions inventories indicate low potential lead concentrations in the State (see page 24 of the 2013 South Dakota AMNP at *http://denr.sd.gov/des/aq/aqnews/Ann%20plan%202013.pdf*).

part D, Title 1 of the CAA establishes additional provisions for PM nonattainment areas.

The 2008 implementation rule addressed by the court decision, ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 Implementation rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the court's decision. Accordingly, EPA's proposed approval of South Dakota's infrastructure SIP as to elements C or J with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 Implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for $PM_{2.5}$ is contained in EPA's October 20, 2010 rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of element (C).

On July 22, 2011, we approved revisions to ARSD Chapter 74:36:09 that adopted by reference federal provisions of 40 CFR part 52, section 21, as they existed on July 1, 2009 (76 FR 43912, July 22, 2011). As July 1, 2009 is after the effective date of the 2008 $PM_{2.5}$ Implementation Rule, 76 FR 43912 incorporated the requirements of the 2008 $PM_{2.5}$ Implementation Rule; specifically, 40 CFR 52.21(b)(23)(i) and 52.21(b)(50). On July 29, 2013, the State submitted revisions amending the ARSD pertaining to the issuance of South Dakota air quality permits. On June 27, 2014, we acted on two pieces from the July 29, 2013 submittal (see 79 FR 36419) which included the removal of ARSD Chapter 74:36:04:03:01 (Minor Source Operating Permit Variance) and revisions to ARSD Chapter 74:36:10 (New Source Review). The July 29, 2013, submittal also included revisions to ARSD Chapter 74:36:09 (Prevention of Significant Deterioration) which we are acting on in this action. The revision adopted by reference federal provisions of 40 CFR part 52, section 21, as they existed on July 1, 2012. As July 1, 2012 is after the effective date of the 2010 $PM_{2.5}$ Increment Rule, the revisions to ARSD 74:36:09 as submitted on July 29, 2013, incorporate the requirements of the 2010 $PM_{2.5}$ Increment Rule; specifically, 40 CFR 52.21(b)(14)(i), (ii), (iii), (b)(15)(i), (ii), and paragraph (c). We propose to approve the necessary portions of the July 29, 2013 submission to reflect the requirements of the 2010 $PM_{2.5}$ Increment Rule. We are not proposing to act on any other portions of the July 29, 2013 submittal, including the incorporation by reference of SILs and SMCs for $PM_{2.5}$.

With these proposed revisions, South Dakota's SIP-approved PSD program will meet current requirements for $PM_{2.5}$. As a result, EPA is proposing to approve South Dakota's infrastructure SIP for the 1997 and 2006 $PM_{2.5}$, 2008 ozone, 2008 Pb, and 2010 NO_2 NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program was originally approved by EPA on September 6, 1995 (60 FR 46222). Since approval of the minor NSR program, the State and EPA have relied on the program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. Additionally, EPA is not proposing to approve or disapprove any state rules with regard to the NSR Reform requirements because they are outside the scope of this action. EPA's recent action taken on changes to South Dakota's minor source NSR program (79 FR 36419, June 27, 2014) does not impact the approvability of Section 110(a)(2)(C) in this action.

EPA is proposing to approve South Dakota's infrastructure SIP for the 1997 and 2006 $PM_{2.5}$, 2008 ozone, 2008 Pb, and 2010 NO_2 NAAQS 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.

4. Interstate Transport: Section 110(a)(2)(D)(i) is subdivided into four ''prongs,'' two under 110(a)(2)(D)(i)(I) and two under 110(a)(2)(D)(i)(II). The two prongs under 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit emissions that (prong 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (prong 2) interfere with maintenance by any other state with respect to the same NAAQS. The two prongs under 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that interfere with measures required to be included in the applicable implementation plan for any other state under part C (prong 3) to prevent significant deterioration of air quality or (prong 4) to protect visibility.

We are proposing action on all four interstate transport prongs for the 2006 $PM_{2.5}$, 2008 Pb, and 2010 NO_2 NAAQS in this rulemaking. We are not acting on the requirements of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) for the 2008 ozone NAAQS in this proposed rulemaking and will act on these requirements in a separate action, but are proposing to approve prongs 3 and 4 for the 2008 ozone NAAQS with this action. EPA approved all four interstate transport requirements of section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS in a direct final rulemaking on May 8, 2008 (73 FR 26019).

a. Prong 1 (Significant Contribution to Nonattainment) and 2 (Interference With Maintenance)

2006 $PM_{2.5}$ NAAQS

EPA has previously addressed the requirements of CAA section 110(a)(2)(D)(i)(I) in past regulatory actions.[15] EPA published the final Cross-State Air Pollution Rule (CSAPR) to address the first two elements of CAA section 110(a)(2)(D)(i)(I) in the eastern portion of the United States with respect

[15] *See* NO_X SIP Call (63 FR 57371, Oct. 27, 1998); Clean Air Interstate Rule (CAIR) (70 FR 25172, May 12, 2005); and Transport Rule or Cross-State Air Pollution Rule (76 FR 48208, Aug.8, 2011).

to the 2006 $PM_{2.5}$ NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS (76 FR 48208, Aug. 8, 2011). CSAPR was intended to replace the earlier Clean Air Interstate Rule (CAIR) which was judicially remanded.[16] *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued a decision vacating CSAPR, *see EME Homer City Generation, L.P.* v. *E.P.A.,* 696 F.3d 7 (D.C. Cir. 2012), and ordering the EPA to continue implementing CAIR in the interim. However, on April 29, 2014, the U.S. Supreme Court reversed and remanded the D.C. Circuit's ruling and upheld EPA's approach in CSAPR. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (U.S. 2014).

South Dakota's 2006 $PM_{2.5}$ transport analysis contains the State's assessment of the potential for emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors from South Dakota sources to significantly contribute to nonattainment or interfere with maintenance of the 24-hour $PM_{2.5}$ standards in any other state. The State considered distance, population data in South Dakota and other states, and transport modeling conducted for the CAIR in its analysis. The State's analysis and all related documents can be found in the electronic docket for this action.

To determine whether the CAA section 110(a)(2)(D)(i)(I) requirement is satisfied, EPA first determines whether a state's emissions contribute significantly to nonattainment or interfere with maintenance in downwind areas. If a state is determined not to have such contribution or interference, then section 110(a)(2)(D)(i)(I) does not require any changes to a SIP. EPA is proposing to determine that the existing SIP for South Dakota is adequate to satisfy the requirements of 110(a)(2)(D)(i)(I) of the CAA to address interstate transport requirements with regard to the 2006 $PM_{2.5}$ NAAQS. This proposed conclusion is based on air quality modeling originally conducted by EPA during the rulemaking process for CSAPR. This modeling quantified, for each individual state within the modeling domain (including South Dakota), contributions to downwind nonattainment and maintenance areas.

In the CSAPR rulemaking (proposal and final) process, EPA explained how nonattainment and maintenance ''receptors'' would be identified so that contribution to nonattainment and interference with maintenance could be assessed with respect to those receptors.[17] The receptors were identified as all monitoring sites that had $PM_{2.5}$ design values above the level of the 2006 24-hour $PM_{2.5}$ NAAQS (35 $\mu g/m^3$) for certain analytic years. Then EPA compiled an emissions inventory for the year 2005, the most recent year for which EPA had a complete national inventory at that time. In the CSAPR analysis, EPA also projected the inventory for a future year analysis for evaluating the interstate transport impacts in that future year.[18] The air quality modeling, conducted for CSAPR, then evaluated interstate contributions from emissions in upwind states to downwind nonattainment and maintenance receptors for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. See, Air Quality Modeling Final Rule Technical Support Document, June 2011 (''Air Quality Modeling TSD'') for the CSAPR. Appendix D of the TSD details South Dakota's contribution data for the 2006 24-hour $PM_{2.5}$ NAAQS for all downwind receptors.

EPA then used air quality thresholds to identify linkages between upwind states and downwind nonattainment and maintenance receptors. As detailed in EPA's Air Quality Modeling TSD, EPA used a threshold of 1% of the NAAQS to identify these linkages. Our analysis for CSAPR found that the 1% threshold captures a high percentage of the total pollution transport affecting downwind states for $PM_{2.5}$.[19] The air quality thresholds were therefore calculated as 1% of the NAAQS, which is 0.35 $\mu g/m^3$ for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA found states projected to exceed this air quality threshold at one or more downwind nonattainment receptors emissions to be linked to all such receptors, and therefore subject to further evaluation. EPA did not conduct further evaluation of emissions from states that were not linked to any downwind receptors.

The methodology and modeling used to analyze the impact of emissions from South Dakota and to identify potential linkages between South Dakota and downwind nonattainment and maintenance receptors with respect to the 1997 and 2006 $PM_{2.5}$ NAAQS is described in further detail in the Air Quality Modeling TSD, which is available in the docket for this action.

In its submittal, South Dakota considered factors we have generally found to be relevant for assessing interstate transport for western states that were not within the modeling domain for CSAPR.[20] However, South Dakota was within the modeling domain for CSAPR. As we consider the modeling conducted during the development of CSAPR to contain the most accurate and comprehensive technical assessment of $PM_{2.5}$ interstate transport for those states within its modeling domain, including South Dakota, we examined that analysis to assess transport of $PM_{2.5}$ emissions from South Dakota to other states.

The air quality modeling performed during the development of CSAPR found that the impact from South Dakota emissions on both downwind nonattainment and maintenance receptors was less than the 1% threshold for the 2006 $PM_{2.5}$ NAAQS. Therefore, EPA did not find emissions from South Dakota linked to any downwind nonattainment or maintenance receptors for the 2006 24-hour $PM_{2.5}$ NAAQS.

Below is a summary of the air quality modeling results for South Dakota from Table IV–9 of EPA's Air Quality Modeling TSD regarding South Dakota's largest contribution to both downwind $PM_{2.5}$ nonattainment and maintenance areas.

[15] *See* NO_X SIP Call (63 FR 57371, Oct. 27, 1998); Clean Air Interstate Rule (CAIR) (70 FR 25172, May 12, 2005); and Transport Rule or Cross-State Air Pollution Rule (76 FR 48208, Aug.8, 2011).

[16] CAIR addressed the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS. It did not address the 2006 24-hour $PM_{2.5}$ NAAQS. For more information on CAIR, see the July 30, 2012 proposal for Arizona regarding interstate transport for the 2006 $PM_{2.5}$ NAAQS (77 FR 44551, 44552). In addition, South Dakota was not covered by either CAIR or CSAPR.

[17] For our definition of both nonattainment and maintenance receptors, see the Technical Support Documents for the final CSAPR, including the ''Technical Support Document (TSD) for the Transport Rule—Air Quality Modeling,'' (the proposal TSD) June 2010, and the ''Air Quality Modeling Final Rule Technical Support Document,'' (Air Quality Modeling TSD) June 2011, in the docket for this action.

[18] Emissions Inventory Final Rule TSD, June 28, 2011.

[20] *See* Memorandum from William T. Harnett entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' September 25, 2009, available at *http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf.*

TABLE 1—SOUTH DAKOTA'S LARGEST CONTRIBUTION TO DOWNWIND $PM_{2.5}$ NONATTAINMENT AND MAINTENANCE AREAS

NAAQS	Air quality threshold (μg/m3)	Largest downwind contribution to nonattainment (μg/m3)	Largest downwind contribution to maintenance (μg/m3)
2006 24-hour $PM_{2.5}$ NAAQS (35 μg/m3)	0.35	0.10	0.17

Based on this analysis, we propose to approve South Dakota's submission certifying that its SIP meets the requirements of section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS.

2008 Pb NAAQS

South Dakota's analysis of potential interstate transport for the 2008 Pb NAAQS includes considerations of Pb emissions, the distance of Pb sources in South Dakota to nearby states, and the lack of Pb nonattainment areas near the State's border. The State's analysis is available in the docket for this action.

As noted in our October 14, 2011 Pb Infrastructure Guidance, there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases. For this reason, EPA found that the ''requirements of subsection (2)(D)(i)(I) (prongs 1 and 2) could be satisfied through a state's assessment as to whether or not emissions from Pb sources located in close proximity to their state borders have emissions that impact the neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state.'' [21] In that guidance document, EPA further specified that any source appeared unlikely to contribute significantly to nonattainment unless it was located less than 2 miles from a state border and emitted at least 0.5 tons per year of Pb. South Dakota's 110(a)(2)(D)(i)(I) analysis specifically noted that there are no sources in the State that meet both of these criteria. EPA concurs with the State's analysis and conclusion that no South Dakota sources have the combination of Pb emission levels and proximity to nearby nonattainment or maintenance areas to contribute significantly to nonattainment in or interfere with maintenance by other states for this NAAQS. South Dakota's SIP is therefore adequate to ensure that such impacts do not occur. We are proposing to approve South Dakota's submission in that its SIP meets the requirements of section 110(a)(2)(D)(i) for the 2008 Pb NAAQS.

2010 NO_2 NAAQS

South Dakota's 2010 NO_2 transport analysis includes considerations of the low level of NO_2 emissions in the State, and specifically notes that the State's main source of NO_2 emissions is in the process of installing pollution control equipment that will decrease its NO_2 emissions by 76%.[22] South Dakota also notes that there are no designated nonattainment areas for the 2010 NO_2 NAAQS, and that the only area that might be considered (according to South Dakota) as a potential maintenance area in the U.S. is hundreds of miles from South Dakota, and in the opposite direction of that in which prevailing winds travel (*i.e.,* west to east) in the western U.S. The State's analysis is available in the docket for this action.

EPA concurs with the technical components of South Dakota's 2010 NO_2 transport analysis. In addition to the factors considered in the State's analysis, EPA also notes that the highest monitored NO_2 design values in each state bordering South Dakota are significantly below the NAAQS (see Table 2, below).[23] This fact further supports the State's contention that significant contribution to nonattainment or interference with maintenance of the NO_2 NAAQS from South Dakota is very unlikely based on the lack of relatively nearby areas with high NO_2.

TABLE 2—HIGHEST MONITORED 2010 NO_2 NAAQS DESIGN VALUES

State	2010–2012 Design value	Percent of NAAQS (100 ppb)
Iowa	42 ppb	42%.
Minnesota	46 ppb	46%.
Montana	42 ppb	42%.
North Dakota	39 ppb	39%.
Nebraska	No Data	No Data.
Wyoming	46 ppb	46%.

* Source: *http://www.epa.gov/airtrends/values.html*

In addition to the monitored levels of NO_2 in states bordering South Dakota being well below the NAAQS, South Dakota's highest design value from 2011–2013 was also significantly below this NAAQS (37 ppb).[24]

Based on all of these factors, EPA concurs with the State's conclusion that South Dakota does not contribute significantly to nonattainment or interfere with maintenance of the 2010 NO_2 NAAQS in other states. EPA is therefore proposing to determine that South Dakota's SIP includes adequate provisions to prohibit sources or other emission activities within the State from emitting NO_2 in amounts that will contribute significantly to nonattainment in or interfere with maintenance by any other state with respect specifically to the NO_2 NAAQS.

[21] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS).'' Steve Page, OAQPS Director, October 14, 2011, at pg 8.

[22] Pollution control equipment is being installed at the Otter Tail Power Company—Big Stone 1, as BART in accordance with regional haze requirements. *See* 77 FR 24845, April 26, 2012.

[23] EPA did not calculate a 2010 one-hour NO_2 design value in the state of Nebraska for the 2010–2012 design value period.

[24] *http://www.epa.gov/airtrends/values.html.*

b. Prongs 3 (PSD) and 4 (Visibility)

South Dakota's certifications with regard to prongs 3 and 4 of element (D) vary by pollutant. Each certification can be found in the docket for this action.

With regard to the PSD portion of section 110(a)(2)(D)(i)(II), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a SIP-approved PSD program that satisfactorily implements the associated NAAQS. As discussed in more detail with respect to section 110(a)(2)(C), finalization of our proposed approval of certain PSD-related revisions in this action will ensure that South Dakota's SIP-approved PSD program meets current requirements for the 2006 $PM_{2.5}$, 2008 ozone, 2008 Pb, and 2010 NO_2 NAAQS. Accordingly, in this action EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$, 2008 ozone, 2008 Pb, and 2010 NO_2 NAAQS.

With regard to the visibility portion of section 110(a)(2)(D)(i)(II), this requirement may be satisfied by a state's regional haze SIP having been approved by EPA as meeting all current obligations. South Dakota submitted a regional haze SIP to EPA on January 21, 2011, and submitted an amendment to the SIP on September 19, 2011. EPA approved South Dakota's Regional Haze SIP on April 26, 2012 (77 FR 24845).

The EPA is proposing to find that as a result of the prior approval of the South Dakota regional haze SIP, the South Dakota SIP contains adequate provisions to address 110(a)(2)(D)(i)(II) visibility requirements with respect to the 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. Therefore, we are proposing to approve the South Dakota SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

5. Interstate and International transport provisions: CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

Section 126(a) requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator regarding sources violating the ''interstate transport'' provisions of section 110(a)(2)(D)(i). Section 115 similarly pertains to international transport of air pollution. South Dakota's SIP-approved PSD program incorporates by reference the federal PSD program at 40 CFR 52.21. However, South Dakota separately implements public notice requirements by incorporating by reference (with certain modifications) 40 CFR 51.166(q). In particular, section 51.166(q)(2)(iv), which requires notice to states whose lands may be affected by the emissions of sources subject to PSD, satisfies the notice requirement of section 126(a).

South Dakota has no pending obligations under sections 126(c) or 115(b). Accordingly, South Dakota's SIP currently meets the requirements of those sections. The SIP therefore meets the requirements of 110(a)(2)(D)(ii) for the 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

6. Adequate resources: Section 110(a)(2)(E)(i) requires states to provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof). Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under CAA section 128. Section 110(a)(2)(E)(iii) requires states to ''provide necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision.''

a. Sub-Elements (i) and (iii): Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

SDCL 34A–1–57 through 34A–1–60 provide adequate authority for the State of South Dakota and the DENR to carry out its SIP obligations with respect to the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant from EPA along with required state matching funds to provide funding necessary to carry out South Dakota's SIP requirements. South Dakota's resources meet the requirements of CAA section 110(a)(2)(E). The regulations cited by South Dakota in their certifications and contained within this docket also provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions by local governments. Therefore, we propose to approve South Dakota's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

b. Sub-Element (ii): State Boards

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

On June 16, 2014, EPA received a submission from the State of South Dakota to address the requirements of section 128. The submission revises language already in the EPA approved SIP at ARSD 74:09, Procedures Board of Minerals and Environment, to address conflict of interest requirements in section 128(a)(2) and adds language in SDCL 1–40–25.1 to address board composition requirements in section 128(a)(1). We propose to approve that June 16, 2014 submission as meeting the requirements of section 128 for the reasons explained in more detail below. Because this revision will meet the requirements of section 128, we also propose to approve the State's infrastructure SIP submissions for element 110(a)(2)(E)(ii). The State made these infrastructure SIP submissions in connection with the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS, but section 128 is not NAAQS-specific and once the State has met the requirements of section 128 that is sufficient for purposes of infrastructure SIP requirements for all of these NAAQS.

We are proposing to approve the State's June 16, 2014 SIP submission as meeting the requirements of section 128 because we believe that it complies with the statutory requirements and is consistent with EPA's guidance recommendations concerning section 128. In 1978, EPA issued a guidance memorandum recommending ways states could meet the requirements of section 128, including suggested interpretations of certain key terms in

section 128.[25] In this proposal notice, we discuss additional relevant aspects of section 128. We first note that, in the conference report on the 1977 amendments to the CAA, the conference committee stated, ''[i]t is the responsibility of each state to determine the specific requirements to meet the general requirements of [section 128].'' [26] This legislative history indicates that Congress intended states to have some latitude in adopting SIP provisions with respect to section 128, so long as states meet the statutory requirements of the section. We also note that Congress explicitly provided in section 128 that states could elect to adopt more stringent requirements, as long as the minimum requirements of section 128 are met.

In implementing section 128, the EPA has identified a number of key considerations relevant to evaluation of a SIP submission. EPA has identified these considerations in the 1978 guidance and in subsequent rulemaking actions on SIP submissions relevant to section 128, whether as SIP revisions for this specific purpose or as an element of broader actions on infrastructure SIP submissions for one or more NAAQS.

Each state must meet the requirements of section 128 through provisions that EPA approves into the state's SIP and are thus made federally enforceable. Section 128 explicitly mandates that each SIP ''shall contain requirements'' that satisfy subsections 128(a)(1) and 128(a)(2). A mere narrative description of state statutes or rules, or of a state's current or past practice in constituting a board or body and in disclosing potential conflicts of interest, is not a requirement contained in the SIP and does not satisfy the plain text of section 128.

Subsection 128(a)(1) applies only to states that have a board or body that is composed of multiple individuals and that, among its duties, approves permits or enforcement orders under the CAA. It does not apply in states that have no such multi-member board or body that performs these functions, and where instead a single head of an agency or other similar official approves permits or enforcement orders under the CAA. This flows from the text of section 128, for two reasons. First, as subsection 128(a)(1) refers to a majority of members of the board or body in the plural, we think it reasonable to read subsection 128(a)(1) as not creating any requirements for an individual with sole authority for approving permits or enforcement orders under the CAA. Second, subsection 128(a)(2) explicitly applies to the head of an executive agency with ''similar powers'' to a board or body that approves permits or enforcement orders under the CAA, while subsection 128(a)(1) omits any reference to heads of executive agencies. We infer that subsection 128(a)(1) should not apply to heads of executive agencies who approve permits or enforcement orders.

Subsection 128(a)(2) applies to all states, regardless of whether the state has a multi-member board or body that approves permits or enforcement orders under the CAA. Although the title of section 128 is ''State boards,'' the language of subsection 128(a)(2) explicitly applies where the head of an executive agency, rather than a board or body, approves permits or enforcement orders. In instances where the head of an executive agency delegates his or her power to approve permits or enforcement orders, or where statutory authority to approve permits or enforcement orders is nominally vested in another state official, the requirement to adequately disclose potential conflicts of interest still applies. In other words, EPA interprets section 128(a)(2) to apply to all states, regardless of whether a state board or body approves permits or enforcement orders under the CAA or whether a head of a state agency (or his/her delegees) performs these duties. Thus, all state SIPs must contain provisions that require adequate disclosure of potential conflicts of interest in order to meet the requirements of subsection 128(a)(2). The question of which entities or parties must be subject to such disclosure requirements must be evaluated by states and EPA in light of the specific facts and circumstances of each state's regulatory structure.

A state may satisfy the requirements of section 128 by submitting for adoption into the SIP a provision of state law that closely tracks or mirrors the language of the applicable provisions of section 128. A state may take this approach in two ways. First, the state may adopt the language of subsections 128(a)(1) and 128(a)(2) verbatim. Under this approach, the state will be able to meet the continuing requirements of section 128 without any additional, future SIP revisions, even if the state adds or removes authority, either at the state level or local level, to individual or to boards or bodies to approve permits or enforcement orders under the CAA so long as the state continues to meet section 128 requirements. Second, the state may modify the language of subsections 128(a)(1) (if applicable) and 128(a)(2) to name the particular board, body, or individual official with approval authority. In this case, if the state subsequently modifies that authority, the state may have to submit a corresponding SIP revision to meet the continuing requirements of section 128. If the state chooses to not mirror the language of section 128, the state may adopt state statutes and/or regulations that functionally impose the same requirements as those of section 128, including definitions for key terms such as those recommended in EPA's 1978 guidance. While any of these approaches would meet the minimum requirements of section 128, the statute also explicitly authorizes states to adopt more stringent requirements, for example to impose additional requirements for recusal of board members from decisions, above and beyond the explicit board composition requirements. Although such recusal alone does not meet the requirements of section 128, states have the authority to require that over and above the explicit requirements of section 128. These approaches give states flexibility in implementing section 128, while still ensuring consistency with the statute.

EPA has evaluated the June 16, 2014 submission from the State in light of the requirements of section 128 and these key considerations. South Dakota state law establishes a nine-member Board of Minerals and Environment (BME) (SDCL 1–40–25). Under state law, air permits and enforcement orders that are issued by the Secretary can be appealed to the BME in a contested case hearing (SDCL 34A–1–21 (permits), 34A–1–46, 34A–1–48 (orders)). In addition, the BME has authority to hold contested case hearings on air permits on its own initiative (SDCL 34A–1–21), and has certain direct enforcement authorities (SDCL 34A–1–40, 34A–1–44). As EPA has explained in other rulemaking actions, *e.g.,* 78 FR 32613 (May 31, 2013), we interpret section 128(a)(1) to mean that boards that are the potential final decisionmaker via permit and enforcement order appeals ''approve'' those permits and enforcement orders. For example, by being the final decisionmaker with respect to questions such as whether a source receives a permit and the specific contents of such a permit, the board is an entity that approves the permit within the meaning of 128(a)(1). Thus, the BME is subject to the requirements of 128(a)(1). South Dakota's June 16, 2014 submission

[25] Memorandum from David O. Bickart, Deputy General Counsel, to Regional Air Directors, Guidance to States for Meeting Conflict of Interest Requirements of Section 128 (Mar. 2, 1978).

[26] H.R. Rep. 95–564 (1977), reprinted in 3 *Legislative History of the Clean Air Act Amendments of 1977,* 526–27 (1978).

includes a statute, SDCL 1–40–25.1, which provides that the BME must be composed in conformance with requirements of section 128 of the CAA for all permits and enforcement orders initiated under South Dakota's air pollution control authority. Thus, the State has submitted a legally binding requirement for inclusion into the SIP that requires the BME to be comprised of a majority of members that represent the public interest and do not receive a substantial portion of their income from parties subject to permit requirements or enforcement orders under the CAA. We propose to approve this submission as satisfying the requirements of subsection 128(a)(1).

To meet the requirements of subsection 128(a)(2), the State's June 16, 2014 submittal includes disclosure requirements applying to members of the BME. Members of the BME must disclose ''potential conflicts of interest'' as defined in ARSD 74:09:01:21 in a contested case proceeding on the record at the initiation of the hearing, or during the hearing if they become aware of the existence of a potential conflict of interest. In addition, members with a ''conflict of interest'' as defined in ARSD 74:09:01:20 must make a statement of recusal on the record at the initiation of the hearing and may not participate in board discussions or decision-making regarding that proceeding. Conflicts of interest are broadly defined in ARSD 74:09:01:20 as any ''board member who is personally related to a party involved in a contested case hearing by two degrees of consanguinity, who has direct financial interest in a party involved in a contested case hearing through employment or by contract, or whose spouse is employed by or directly contracts with a party involved in a contested case hearing.'' Furthermore, a potential conflict of interest is defined in ARSD 74:09:01:21 as ''an indirect financial interest, or a personal relationship or another interest in a party involved in a contested case hearing or enforcement hearing that is different from that of the general public, that a reasonable person would believe might result in bias or prejudgment of a contested case hearing.'' EPA thinks these definitions of ''conflict of interest'' and ''potential conflict of interest,'' taken in tandem, are sufficiently broad to address the types of conflicts of interest that should be disclosed under 128(a)(2). While not precisely consistent with the types of conflicts addressed in our 1978 guidance for section 128, in some ways South Dakota's provisions are in fact broader. In addition, we think that disclosure on the record at the start of a hearing is an adequate form of disclosure. Such disclosure will provide public access to the relevant information about conflicts of interest and memorialize that information.

EPA's review of the State's June 16, 2014 submission has raised one issue that warrants further evaluation. Section 128(a)(2) requires that a state's SIP provide for adequate disclosure of conflicts of interest by ''members of such board or body or the head of an executive agency with similar powers.'' The use of the disjunctive ''or'' between ''board or body'' and ''head of an executive agency'' results in ambiguity concerning whether merely one or both of these parties must disclose conflicts of interest, and if it is only one of these entities, which one? This ambiguity is relevant in the case of the submission from the State because under state law included within such submission, only the members of the BME are required to disclose conflicts of interest, not the head of the executive agency. In order to determine whether this is sufficient for purposes of meeting the requirements of section 128(a)(2), we have evaluated the statutory language more closely.

First, the term ''or'' can be interpreted as ''one or the other, but not necessarily both,'' or it can be interpreted as ''and.'' Although the word ''or'' could be read to mean ''and'' in some circumstances, we believe that in this instance it is appropriate to give the word ''or'' its most straightforward meaning. In isolation, it could seem unreasonable to give ''or'' the first meaning, as that would allow a state to require adequate disclosure of conflict of interest by either the members of the state board or the head of an agency, without regard to whether that disclosure requirement applies to the entity that makes the final permit or enforcement order decision. To read section 128(a)(2) to require disclosure by the entity that is not the actual final decisionmaker appears logically inconsistent and contrary to the overall purposes of section 128. EPA believes that the purpose of section 128(a)(2) is to assure that conflicts of interest are disclosed by the entity making the permit or enforcement order decision, and requiring this of the ultimate decisionmaker rather than other parties that may be involved in the process.

As discussed above, under South Dakota law all members of the BME have to disclose conflicts of interest in specified ways that we believe are adequate. Under the structure of the State's program, the Secretary makes certain decisions such as the issuance of air permits and enforcement orders. However, under state law these permits and enforcement orders issued by the Secretary can be appealed to the BME in a contested case hearing (SDCL 34A–1–21 (permits), 34A–1–46, 34A–1–48 (orders)). In addition, the BME has authority to hold contested case hearings on air permits on its own initiative (SDCL 34A–1–21), and has certain direct enforcement authorities (SDCL 34A–1–40, 34A–1–44). Given this division of authority in the State, we believe that the BME is functionally the final decisionmaker with respect to permits and enforcement orders in South Dakota, and thus the disclosure of conflicts of interest by members of the BME is necessary to meet the requirements of section 128(a)(2). Naturally, a state may elect to require disclosure of conflicts of interest by other state officials and employees as well, and this would be fully consistent with the explicit reservation of authority for states to impose more stringent requirements than those imposed by section 128.

For the foregoing reasons, the EPA believes that the June 16, 2014 submission from South Dakota contains provisions that meet the requirements of section 128(a)(1) and section 128(a). Accordingly, we are proposing approval of that submission and also proposing approval of the infrastructure SIP submission as meeting the requirements of section 128.

7. Stationary source monitoring system: Section 110(a)(2)(F) requires: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) Periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) Correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

The South Dakota statutory provisions listed in the State's certifications (SDCL 34A–1–6 and SDCL 34A–1–12) and contained within this docket provide authority to establish a program for measurement and testing of sources, including requirements for sampling and testing. South Dakota's SIP approved continuous emissions monitoring system rules (ARSD 74:36:13 and contained within this docket) require facilities to monitor and report emission data. ARSD 74:36:04:15(10), contents of operating permit, requires operating permits for minor sources to

include monitoring and related record keeping and reporting requirements. Reports contain the quantity of hazardous air pollutants, in tons, emitted for each 12-month period in the reporting period and supporting documentation. Operating permits for minor sources must comply with emission limits and other requirements of the Act (ARSD 74:36:04:04 and ARSD 74:36:04:15). Additionally, ARSD 74:36:05:16.01(9) is applicable regarding data from sources with title V permits. South Dakota has an approved title V program (61 FR 2720, Jan. 29, 1996) and the definition of applicable requirements for a Part 70 source has been approved into its SIP at ARSD 74:36:01:05. This re-enforces a facility's record keeping and reporting emissions data responsibilities under title V permitting, even though the title V program is not approved into the SIP.

Additionally, South Dakota is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. South Dakota made its latest update to the NEI on January 9, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html*.

Based on the analysis above, we propose to approve the South Dakota SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 1997 and 2006 $p.m._{2.5,}$ 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

8. Emergency powers: Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to ''provide for authority comparable to that in [CAA section 303] and adequate contingency plans to implement such authority.'' Section 303 reads as follows:

> Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

Thus, the EPA Administrator has authority to bring suit to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment. If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if EPA subsequently files a civil suit. The 1990 Amendments to the Act modified Section 303.[27]

EPA's 2013 Infrastructure SIP Guidance (for the 2008 ozone, 2010 NO_2, 2010 sulfur dioxide, and all future NAAQS), represents EPA's most recent guidance, which we've cited earlier in this notice given its broad applicability, states that the best practice for states is to submit, for inclusion in the SIP, the statutory or regulatory provisions that provide authority comparable to CAA section 303 or to cite and include a copy of such provisions, without including them in the SIP, with a narrative of how they meet the requirements of section 110(a)(2)(G).[28]

We propose to find that South Dakota's Infrastructure SIP Submittals and certain State statutes provide for authority for the State comparable to that granted to the EPA Administrator to act in the face of an imminent and substantial endangerment to public's health or welfare, or the environment.

South Dakota's SIP submittals with regard to the section 110(a)(2)(G) emergency order requirements explain that:

> SDCL section 34A–1–45 (Emergency order for immediate reduction or discontinuance of emissions) is comparable to Section 303 of the Clean Air Act and provides that ''*if the Secretary of the Department of Environment and Natural Resources finds that any person is causing or contributing to air pollution and that such pollution creates an emergency by*

[27] Section 303 of CAA as modified in 1990 substituted the term ''public health or welfare, or the environment'' for ''the health of persons,'' eliminated the requirement for state or local inaction as a prerequisite to EPA initiating action, and lengthened the duration of administrative orders from 24 hours to 60 days. The Senate Report on the 1990 Amendments explained that:

> These amendments to section 303 of the Act, as well as parallel (sic) amendments to section 113, have several purposes. The (sic) amendments broaden the Administrator's (sic) authority to issue emergency orders to abate threats to welfare and the environment, in addition to the authority to respond to threats to ''the health of persons.'' In addition, the amendments eliminate the 24- to 48-hour time limit on the effectiveness of emergency orders. These changes are necessary to enable the Administrator to address air pollution emergencies in an adequate manner, and to conform the Administrator's emergency authority under the Act to emergency authorities under other environmental laws. See, TSCA section 208, CERCLA section 106, RCRA section 7003, and CWA section 504. Similarly, the deletion of the requirement that the Administrator may not bring suit unless State or local authorities have failed to act conforms the Act to other environmental laws.
>
> Broadening section 301 to include harm to the environment is important to enable EPA to address emergency threats to ecosystems in instances where there is no readily demonstrable immediate threat to human health. For example, toxic emissions might be blowing downwind from a facility into an undeveloped natural area and threatening to impair that area's ecosystem. This amendment will allow EPA to order the plant to take necessary steps to eliminate the threat to flora and fauna. Deleting the unrealistically short time limits on the duration of orders is necessary to ensure that these orders are a viable enforcement tool. In order to protect State interests and to prevent duplication of effort, this section requires that the Administrator consult with the State and local authorities before taking any action. The enforcement provision, section 303(b), has been deleted as unnecessary because emergency orders have been made enforceable under section 113.
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> S. Rep. No. 101–228, 101 Cong., 1st Sess. 370. EPA's 1999 guidance on section 303 contains additional information regarding the legislative history of this section. While the guidance indicates it ''is intended to be used by EPA as internal guidance only and does not establish any substantive or procedural rights'' we include the guidance in the proposed docket for this action as background information. ''Transmittal Memo and Guidance Document on Section 303 of the Clean Air Act,'' Eric. V. Schaeffer, Director, Office of Regulatory Enforcement, EPA Office of Enforcement and Compliance Assurance (April 1, 1999).

[28] 2013 Infrastructure SIP Guidance, pp. 47–50.

causing imminent danger to human health or safety and requires immediate action to protect human health or safety, the Secretary shall order such person or persons to reduce or discontinue immediately the emission of air contaminants.'' [29]

Accordingly, we have reviewed South Dakota's statutory provisions for evidence that the State has authorities comparable to those in section 303. Our review included the provision discussed above, as well as provisions in the current SDCL.[30] None of these state laws have been submitted for incorporation into the South Dakota SIP.

With regard to the authority to bring suit, SDCL 34A–10–1 extends the right to the ''attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person partnership, limited liability company, corporation, association, organization, or other legal entity'' to ''maintain an action'' for ''declaratory and equitable relief . . . against any person . . . for the protection of the air, water, and other natural resources and the public trust therein from pollution, impairment, or destruction.'' In addition, SDCL 34A–10–2 states that ''[i]f administrative, licensing, or other proceedings, and judicial review thereof are available by law, the agency may permit the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, limited liability company, corporation, association, organization, or other legal entity to intervene'' in that proceeding involving ''conduct which has the effect of polluting, impairing, or destroying the air, water, or other natural resources or the public thrust therein.'' SDCL 21–10–1 through 21–10–9 also provide the State with the authority regarding nuisances, including the authority to seek specific remedies against nuisances (SDCL 21–10–5). The definitions of acts and omissions constituting nuisances provide the State with broad authority to bring suit against persons causing pollution and injury or endangering the health or safety of others (SDCL 21–10–1).

By using terms such as ''pollution, impairment, or destruction,'' and ''protection of the air, water, and other natural resources,'' these statutes (SDCL 34A–10–1, 34A–10–2) provide stated entities with broad authority to bring suit against persons causing pollution of varying degrees of urgency, including pollution that presents an imminent and substantial endangerment.[31] These provisions provide arguably broader authority than what CAA section 303 provides to EPA, as they do not by their terms first require the stated entities to assert that the would-be enjoined pollution constitutes imminent and substantial endangerment. We propose to find that these provisions, while not specifically mentioning ''public health,'' ''welfare,'' or the ''environment,'' are nonetheless comparable to section 303 and broadly empower the State to address through civil action threats to public health (*e.g.,* from pollution), welfare (*e.g.,* from nuisances, and for protection of the air, water, and other natural resources), and the environment (*e.g.,* protection of natural resources from pollution, impairment, or destruction) from any imminent and substantial endangerment.

South Dakota's statutes also provide DENR's Secretary with the authority to issue administrative orders and emergency rules, and suspend state agency rules, to protect the public health, welfare, and the environment under certain circumstances. SDCL 34A–1–45, as cited in South Dakota's SIP submittals, authorizes that if the Secretary of the DENR ''finds that any person is causing or contributing to air pollution and that such pollution creates an emergency by causing imminent danger to human health or safety and requires immediate action to protect human health or safety,'' ''the secretary shall order the person to reduce or discontinue immediately the emission of air contaminants.'' The emergency order is effective immediately on service upon the person responsible for the emission, and any person to whom such an order is directed shall comply with the order immediately. SDCL 34A–10–2.5 provides authority for the DENR to apply to the court for an injunction, including temporary injunctions, against any person who fails to comply with such orders.

Additionally, SDCL 1–26–5(3) authorizes any agency to adopt or amend an emergency rule for reasons including ''imminent peril to the public health, safety, or welfare . . . or because of the occurrence of an unforeseen event at a time when the adoption of a rule in response to such event by the emergency procedure is required to secure or protect the best interests of the state or its residents.'' Subject to applicable constitutional or statutory provisions, emergency rules are ''effective immediately upon filing with the secretary of state'' or at another stated date; and ''[n]o emergency rule may remain in effect for a period of no longer than ninety days'' (SDCL 1–26–8). South Dakota's statutes also require that certain procedures be followed prior to adoption of the emergency rule. ''[A]n agency shall publish a notice of intent to adopt an emergency rule in the manner prescribed in section 1–26–4.1'' (SDCL 1–26–5). SDCL 1–26–4.1 provides that ''the notice of intent to adopt an emergency rule shall be mailed to each person who has made a timely request of the agency for advance notice of its rule-making proceedings.'' SDCL requires that the agency ''serve on the person specified in subdivision 1–26–4(1),[32] each member of the Interim Rules Committee and the director'' the information specified in SDCL 1–26–5 and follow the notification and mailing requirements in SDCL 1–25–4.1. Finally, SDCL 1–26–5(3) requires that notice of proposed emergency rule served on the specified individuals shall include ''[a] statement, with the reasons, that the emergency procedure is necessary: because of imminent peril to

[29] We note that the South Dakota Legislature's compilation of statutes indicates that SDCL section 34A–1–45 reads slightly differently from the language that appears in the infrastructure SIP submission, and additionally, does not contain the last sentence of the paragraph. This proposed action considers the statute as it appears on the State's compilation, which reads as follows: ''34A–1–45. Emergency order for immediate reduction or discontinuance of emissions. If the secretary finds that any person is causing or contributing to air pollution and that such pollution creates an emergency by causing imminent danger to human health or safety and requires immediate action to protect human health or safety, the secretary shall order the person to reduce or discontinue immediately the emission of air contaminants. The emergency order is effective immediately on service upon the person responsible for the emission, and any person to whom such an order is directed shall comply with the order immediately.'' (Available online at: *http://legis.sd.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=34A-1-45,* accessed October 8, 2014).

[30] October 29, 2014 conference call with Brian Gustafson, Kyrik Rombough, Steven Blair, and Roxanne Giedd from the State of South Dakota and Carl Daly, Monica Morales, Sara Laumann, and Abby Fulton from EPA Region 8 regarding feedback on EPA's interpretation of South Dakota's authority comparable to section 303. The State indicated they generally agreed with our analysis.

[31] Notably, South Dakota's definition of ''air pollutant,'' which is a term that triggers the authority contained in several of the applicable provisions, contains a threshold injury requirement relating to injury to human health, welfare or the environment. Under South Dakota law, ''air pollutant'' is defined as, ''the presence in the outdoor atmosphere of one or more contaminants in such quantity and duration as is or tend to be injurious to human health or welfare, animals or plant life, or property or would interfere with the enjoyment of life or property.'' SDCL 34A–1–2(2).

[32] SDCL 1–26–4(1) requires that the agency ''shall serve a copy of a proposed rule and any publication described in section 1–26–6.6 upon the departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer to which it is attached for the secretary's, commissioner's, or officer's written approval to proceed.''

the public health, safety, or welfare; . . . or because of the occurrence of an unforeseen event at a time when the adoption of a rule in response to such event by the emergency procedure is required to secure or protect the best interests of the state or its residents.'' While these provisions do not directly provide authority to issue administrative orders to prevent air pollution that endangers the environment and contain certain notification procedures not found in section 303, they do provide regulatory authority for state agencies to develop emergency rules for the protection of public health and welfare, and welfare is commonly understood to include the elements of what is covered by the term ''environment'' (see, *e.g.*, CAA section 302(h), broadly defining ''effects on welfare'').

We also note that another emergency management option under South Dakota statutes involves the Governor's authorities. For example, Chapter 34–48A, which covers Emergency Management, includes authority for the Governor to issue orders in emergency situations.[33] Additionally, in the event of an ''emergency'' [34] that is beyond local government capability, SDCL 34–48A–5(4) gives the Governor authority to suspend rules under certain circumstances.[35]

While no single South Dakota statute mirrors the authorities of CAA section 303, we propose to find that the combination of SDCL provisions discussed above provide for authority comparable to section 303 to immediately bring suit to restrain, issue emergency executive orders against, and use special rule adoption and suspension procedures for applicable emergencies to take prompt administrative action against, any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment. Consistent with EPA's 2013 Infrastructure SIP Guidance, the narratives provided in South Dakota's SIP submittals about the State's authorities applying to emergency episodes (as discussed above), plus additional South Dakota statutes that we have considered, we propose that they are sufficient to meet the authority requirement of CAA section 110(a)(2)(G).

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as discussed above). This can be met by submitting a plan that meets the applicable requirements of 40 CFR part 51, subpart H for the relevant NAAQS if the NAAQS is covered by those regulations. Rules contained in ARSD and South Dakota's SIP adopt by reference the criteria in 40 CFR 51.151 as the air quality episode plan to address activities causing imminent and substantial endangerment to public health, including a contingency plan to implement the emergency episode provisions of the SIP. As of the date of South Dakota's submittal, EPA has not established priority classification for a significant harm level for $PM_{2.5}$. As DENR explains in its SIP submittals, once EPA promulgates such rules, DENR will adopt them into ARSD 74:36:03 (Air quality episodes).

Subpart H of 40 CFR part 51 requires states to classify regions and to develop contingency plans (also known as emergency episode plans) after ambient concentrations of certain criteria pollutants in an area have exceeded specified levels. For example, if ambient concentrations of nitrogen dioxide in an area have exceeded 0.06 ppm (annual arithmetic mean), then the area is classified as a Priority I region, and the state must develop a contingency plan that meets the requirements of sections 51.151 and 51.152. However, Subpart H does not currently address requirements for the 24-hour $PM_{2.5}$ standard.

In 2009, EPA issued a guidance memorandum that, among other things, recommended an approach for states to address the contingency plan requirements of 110(a)(2)(G) with respect to the 2006 $PM_{2.5}$ NAAQS.[36] The guidance, in Attachment A, suggested that states develop a contingency plan if, based on the most recent three calendar years of data, an area within the state had monitored and recorded a 24-hour $PM_{2.5}$ level greater than 140.4 $\mu g/m^3$. For states that were to develop a contingency plan, the guidance recommended states set priority and emergency levels consistent with requirements of 40 CFR 51.150 through 51.153. EPA notes that section 51.153 requires periodic reevaluation of priority classifications based on the three most recent years of air quality data.

South Dakota has recorded no levels of ambient air concentrations in the three most recent complete calendar years—2011, 2012, and 2013—that exceed the 2009 guidance memorandum [37] recommended levels for states to develop a contingency plan for $PM_{2.5}$. However, on September 4, 2009 a continuous $PM_{2.5}$ air monitor operated by the State of South Dakota in Wind Cave National Park registered a 24-hour level of 303.6 $\mu g/m^3$. The monitor in question was a special purpose Federal Equivalent Method monitor collocated with a Federal Reference Method (FRM) State and Local Air Monitoring Stations (SLAMS) monitor. The SLAMS FRM was designated as the primary monitor at the site, and recorded 120.5 $\mu g/m^3$ as the official regulatory value for the monitoring station that day. On the day the secondary monitor recorded a value of 303.6 $\mu g/m^3$, the National Park Service conducted a prescribed burn in the Wind Cave National Park. A discussion including details of the event as well as monitoring data are contained within a memo to this docket. Given the unique circumstances of this event and taking into account that the official regulatory value fell below the recommended level for developing a contingency plan, and that the last three years of data also fall below the recommended level, EPA believes it is appropriate to interpret 110(a)(2)(G) as not requiring development of a contingency plan. However, this does not imply that other, future

[33] SDCL 34–48A–9. ''Power to make orders. In performing his duties under this chapter, and to effect its policy and purpose, the Governor is further authorized and empowered to make, amend, and rescind the necessary orders to carry out the provisions of this chapter within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government.''

[34] SDCL 34–48A–1(3) defines emergency as ''any natural, nuclear, man-made, war- related, or other catastrophe producing phenomena in any part of the state which in the determination of the Governor requires the commitment of less than all available state resources to supplement local efforts of political subdivisions of the state to save lives and to protect property, public health, and safety or to avert or lessen the threat of a disaster.''

[35] SDCL 34–48A–5(4) gives the Governor the authority to ''suspend the provisions of any rules of any state agency if strict compliance with the provisions of the rule would in any way prevent, hinder, or delay necessary action in managing a disaster . . . or emergency, including . . . air contamination . . . which is determined by the Governor to require state or state and federal assistance or actions to supplement the recovery efforts of local government in alleviating the damage, loss, hardship, or suffering caused thereby.'' The rules suspended by the Governor remain suspended for six months and may be restored for one or more successive six-month periods if the Governor declares the conditions persist (SDCL 34–48A–5).

[36] Memorandum from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Guidance on SIP Elements Required under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) Standards (NAAQS), at p. 6–7 (Sep. 25, 2009).

[37] Memorandum from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Guidance on SIP Elements Required under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) Standards (NAAQS), at p. 6–7 (Sep. 25, 2009).

circumstances in the state cannot trigger this requirement.

Revisions to the South Dakota Air Quality Episodes rules ARSD 74:36:03:01 ''Air pollution emergency episode'' and ARSD 74:36:03:02 ''Episode emergency contingency plan'' were most recently approved on June 27, 2014 (79 FR 36425). We find that South Dakota's air pollution emergency rules include $PM_{2.5,}$ ozone, and NO_2; establish stages of episode criteria; provide for public announcement whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episode) for particulate matter, ozone, and NO_2.

As noted in the October 14, 2011 guidance,[38] based on EPA's experience to date with the Pb NAAQS and designating Pb nonattainment areas, EPA expects that an emergency episode associated with Pb emissions would be unlikely and, if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of Pb. Accordingly, EPA believes the central components of a contingency plan would be to reduce emissions from the source at issue and communicate with the public as needed. We note that 40 CFR part 51, subpart H (51.150–51.152) and 40 CFR part 51, Appendix L do not apply to Pb.

Based on the above analysis, we propose approval of South Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

9. Future SIP revisions: Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) From time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this [Act].

South Dakota's statutory provision at SDCL 34A–1–6 gives DENR sufficient authority to meet the requirements of 110(a)(2)(H). Therefore, we propose to approve South Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(H).

10. Consultation with government officials, public notification, PSD and visibility protection: Section 110(a)(2)(J) requires that each SIP ''meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).''

The State has demonstrated it has the authority and rules in place through its certifications (contained within this docket) to provide a process of 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, consistent with the requirements of CAA section 121. Furthermore, EPA previously addressed the requirements of CAA section 127 for the South Dakota SIP and determined public notification requirements are appropriate (45 FR 58528, Sept. 4, 1980).

As discussed above, the State has a SIP-approved PSD program that incorporates by reference the federal program at 40 CFR 52.21. EPA has further evaluated South Dakota's SIP approved PSD program in this proposed action under element (C) and determined the State has satisfied the requirements of element 110(a)(2)(C), as noted above. Therefore, the State has also satisfied the requirements of element 110(a)(2)(J).

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we propose to approve the South Dakota SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

11. Air quality and modeling/data: Section 110(a)(2)(K) requires each SIP provide for: (i) The performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

South Dakota's PSD program incorporates by reference the federal program at 40 CFR 52.21, including the provision at 40 CFR 52.21(l)(1) requiring that estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, and the provision at 40 CFR 52.21(l)(2) requiring that modification or substitution of a model specified in Appendix W must be approved by the Administrator.

Additionally, SDLC section 34A–1–1, 34A–1–10, and 1–40–31 provide the Department with the authority to advise, consult, and cooperate with EPA and provide EPA with public records, such as air quality modeling. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed. Therefore, we propose to approve the South Dakota SIP as meeting the CAA section 110(a)(2)(K) for the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

The funding sources used for the PSD permit reviews conducted by South Dakota derive from EPA grant and matching State general funds.[39] There are no nonattainment areas in the State. In light of the State's experience that funding from grants and general funds has been sufficient to operate a successful PSD program, it is reasonable that the PSD permit applicants are not charged any permit-specific fees.

We also note that all the State SIPs we are proposing to approve in this action

[38] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS).'' Steve Page, OAQPS Director, October 14, 2011, at p 13.

[39] *See* Email from Brian Gustafson ''Question Regarding Permitting Fees for SD iSIP Action'' July 24, 2014, available within docket.

cite the regulation that provides for collection of permitting fees under the State's EPA-approved title V permit program (ARSD 74:37:01), which we approved and became effective February 28, 1996 (61 FR 2720, Jan. 29, 1996).

Therefore, based on the State's experience in relying on the grant and general funds for PSD permits, and the use of title V fees to implement and enforce PSD permits once they are incorporated into title V permits, we propose to approve the submissions as supplemented by the State for the 1997 and 2006 p.m.$_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

The statutory provisions cited in South Dakota's SIP submittals (contained within this docket) meet the requirements of CAA section 110(a)(2)(M), so we propose to approve South Dakota's SIP as meeting these requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

VII. What action is EPA taking?

In this action, EPA is proposing to approve the following infrastructure elements for the 1997 and 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS: (A), (B), (C) with respect to minor NSR and PSD requirements, (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is also proposing to approve revisions to ARSD 74:36:09 submitted on July 29, 2013, which incorporate by reference the requirements of the 2010 $PM_{2.5}$ Increment Rule. Specifically, we propose to approve the adoption of the text of 40 CFR 52.21, paragraphs (b)(14)(i),(ii),(iii), (b)(15)(i),(ii), and paragraph (c) as they existed on July 1, 2012 by proposing to approve revisions to: ARSD 74:34:09:02 (Prevention of significant deterioration) and 74:36:09:03 (Public participation). EPA is also proposing to approve revisions to ARSD 74:09 and SDCL 1–40–25.1 submitted on June 11, 2014 to satisfy requirements of element (E)(ii), state boards. Finally, EPA proposes approval of D(i)(I) prongs 1 and 2 for the 2006 $PM_{2.5}$, 2008 Pb, and 2010 NO_2 NAAQS. EPA will act separately on infrastructure element (D)(i)(I), interstate transport for the 2008 ozone NAAQS.

VIII. Statutory and Executive Orders Review

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 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, Feb. 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, Nov. 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 19, 2014.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2014–28301 Filed 11–28–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0353; FRL–9919–96–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana Second 10-Year Carbon Monoxide Maintenance Plan for Great Falls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Montana. On July 13, 2011, the Governor of Montana's designee submitted to EPA a second 10-year maintenance plan for the Great Falls area for the carbon monoxide (CO) National Ambient Air Quality Standard (NAAQS). This maintenance plan addresses maintenance of the CO NAAQS for a second 10-year period beyond the original redesignation. EPA is also proposing approval of an alternative monitoring strategy for the Great Falls CO maintenance area, which was submitted by the Governor's designee on June 22, 2012.

DATES: Comments must be received on or before December 31, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0353, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: clark.adam@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).