EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.120	Restriction of Emissions of Lead from Specific Lead Smelter-Refinery Installations.	3/30/09	6/1/15 *and [Insert **Federal Register** citation].*	Paragraph (3)(B)1 and Table, Provision Pertaining to Limitations of Lead Emissions from Specific Installations, is not approved as part of the SIP. The requirement to limit main stack lead emissions at BRRF to 0.00087 gr/dscf lead in Paragraph (3)(B)2 is not approved as part of the SIP.
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* * * * * (d) * * *

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
*	*	*	*	*
(29) Doe Run Buick Resource Recycling Facility.	Consent Judgment 13IR–CC00016	7/29/13	6/1/15 *and [Insert **Federal Register** citation]*	

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[FR Doc. 2015–13128 Filed 5–29–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0972, FRL–9928–52–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Ozone, 2008 Lead, and 2010 NO2 National Ambient Air Quality Standards; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of Colorado to demonstrate the State meets infrastructure requirements of the Clean Air Act (Act, CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on March 12, 2008; lead (Pb) on October 15, 2008; and nitrogen dioxide (NO_2) on January 22, 2010. 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 July 1, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket Identification Number EPA–R08–OAR–2012–0972. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in the hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 8, Office of Partnership and Regulatory Assistance, Air Program, 1595 Wynkoop Street, Denver, Colorado, 80202–1129. The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m.–4:00 p.m., excluding federal holidays. An electronic copy of the State's SIP compilation is also available at *http://www.epa.gov/region8/air/sip.html.*

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:

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 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 ($\mu g/m^3$) to 0.15 $\mu g/m^3$ (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 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. 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 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 fine particulate matter ($PM_{2.5}$) 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 Colorado that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 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.

Examples of some of these ambiguities and the context in which EPA interprets the ambiguous portions of section 110(a)(1) and 110(a)(2) are discussed at length in our notice of proposed rulemaking: 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 (79 FR 71040 Dec. 1, 2014) under ''III. What is the Scope of this Rulemaking?''

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

[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.

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 Prevention of Significant Deterioration (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'').

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 Colorado address the infrastructure elements of Sections 110(a)(1) and (2)?

The Colorado Department of Public Health and Environment (CDPHE) submitted certifications of Colorado's infrastructure SIP for the 2008 Pb NAAQS on July 26, 2012; the 2008 ozone NAAQS on December 31, 2012; and the 2010 NO_2 NAAQS on March 7, 2013. Colorado's infrastructure certifications demonstrate how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. These plans reference the current Air Quality Control Commission (AQCC) regulations and Colorado Revised Statutes (C.R.S.). These submittals are available within the electronic docket for today's proposed action at *www.regulations.gov.* The AQCC regulations referenced in the submittals are publicly available at *https://www.colorado.gov/pacific/cdphe/aqcc-regs* and *http://www.lexisnexis.com/hottopics/colorado/.* Colorado's SIP, air pollution control regulations, and statutes that have been previously approved by EPA and incorporated into the Colorado SIP can be found at 40 CFR 52.320.

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 AQCC regulations citied in Colorado's certifications provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2008 ozone, 2008 Pb, and 2010 NO_2 NAAQS, subject to the following clarifications.

First, EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Colorado has included some SIP provisions originally submitted in response to part D requirements in its certification for the infrastructure requirements of section 110(a)(2). For the purposes of this action, EPA is reviewing any rules originally submitted in response to part D requirements solely for the purposes of determining whether they support a finding that the State has met the basic infrastructure requirements of section 110(a)(2). For example, in response to the requirement to have enforceable emission limitations under section 110(a)(2)(A), Colorado cited to rules in Regulation Number 7 that were submitted to meet the reasonably available control technology (RACT) requirements of part D. EPA is here approving those rules as meeting the requirement to have enforceable emission limitations on ozone precursors; any judgment about whether those emission limitations discharge the State's obligation to impose RACT under part D will be made separately, in an action reviewing those rules pursuant to the requirements of part D. Colorado also referenced SIP provisions that are relevant, such as limits on emissions of particulate matter (PM) in Regulation 1, woodburning controls in Regulation 4, and the State's minor NSR and PSD programs in Regulation 3. We propose to find these provisions adequately address the requirements of element (A), again subject to the clarifications made in this notice.

Second, in this action, 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.

Third and finally, in this action, EPA is also not proposing to approve or disapprove any existing state provision with regard to excess emissions during SSM or operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance [2] 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 request, make such data available to the Administrator.''

The Colorado Air Pollution Control Division (APCD) periodically submits a Quality Management Plan and a Quality Assurance Project Plan to EPA Region 8. These plans cover procedures to monitor and analyze data. The provisions for episode monitoring, data compilation and reporting, public availability of information, and annual network reviews are found in the statewide monitoring SIP (58 FR 49435, Sept. 23, 1993). As part of the monitoring SIP, Colorado submits an Annual Monitoring Network Plan (AMNP) each year for EPA approval. EPA approved 2013 and 2014 network changes through an AMNP response letter (contained within the docket) mailed to CDPHE on March 13, 2015.

In the AMNP response letter, EPA noted a deficiency in Colorado's AMNP regarding NO_2 monitoring. 40 CFR 58.10(a)(5)(iv) requires that ''a plan for establishing a second near-road NO_2 monitor in any [Core Based Statistical Area] [CBSA] with a population of 2,500,000 or more persons, or a second monitor in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater [annual average daily traffic] counts, in accordance with the requirements of Appendix D, section 4.3.2 to this part, shall be submitted as part of the Annual Monitoring Network Plan to the EPA Regional Administrator by July 1, 2014. The plan shall provide for these required monitors to be operational by January 1, 2015.'' Colorado was required to start its second near-road NO_2 monitor by January 1, 2015. The State did not meet this deadline. However, in a letter dated March 31, 2015 (contained within the docket) CDPHE committed to install and operate the second near-road NO_2 monitoring site by December 31, 2015 at I–25/Acoma Street and 49th Avenue in Denver. The State will notify EPA once the monitor is operational, which will then satisfy the requirements of 40 CFR 58.10(a)(5)(iv).

We find that Colorado's SIP and practices are adequate for the ambient air quality monitoring and data system requirements for the 2008 ozone and 2010 Pb NAAQS; and therefore, propose to approve the infrastructure SIP for the 2008 ozone and 2008 Pb NAAQS for this element.

CAA 110(k)(4) states ''The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.'' Based on Colorado's commitment to install and operate the second near-road NO_2 monitoring site no later than December 31, 2015, we propose to conditionally approve this element for the 2010 NO_2 NAAQS. If however, the State fails to meet the deadline for installing and operating the near-road NO_2 monitor, EPA's conditional approval, if finalized, will revert automatically to a disapproval.

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 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. Colorado has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 29, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone. EPA approved revisions to Colorado's PSD program reflecting these requirements on January 9, 2012 (77 FR 1027), and therefore, Colorado has met the infrastructure SIP requirements of section 110(a)(2)(C) with respect to 2008 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 Supreme 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 interpretation 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

[2] 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.'' (Sept. 20, 1999).

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 in Utility Air. 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 Colorado'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 [3] 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 Colorado PSD permitting program may currently contain provisions that are no longer necessary in light of the Utility Air 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 Utility Air decision does not affect EPA's proposed approval of Colorado'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 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 Colorado'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 May 11, 2012, the State submitted revisions to Regulation 3 that adopted all elements of the 2008 Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule. However, the submittal contained a definition of Major Source Baseline Date which was inconsistent with 40 CFR 51.166(b)(14)(i). On May 13, 2013, the State submitted revisions to Regulation 3 which incorporate the definition of Major Source Baseline Date which was consistent with 40 CFR 51.166(b)(14)(i). These submitted revisions make Colorado's PSD program up to date with respect to current requirements for $PM_{2.5}$. EPA approved the necessary portions of Colorado's May 11, 2012 and May 13, 2013 submissions which incorporate the requirements of the 2008 $PM_{2.5}$ Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule on September 23, 2013 (78 FR 58186). Colorado's SIP-approved PSD program meets current requirements for $PM_{2.5}$. EPA therefore is proposing to approve Colorado's SIP for the 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 is found in Regulation 3 of the Colorado SIP, and was originally approved by EPA as Regulation 3 of the SIP (*see* 68 FR 37744, June 25, 2003). 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.

EPA is proposing to approve Colorado's infrastructure SIP for the 2008 ozone, 2008 Pb, and 2010 NO_2 NAAQS with respect to the general

[3] EPA's proposed notice at 78 FR 30830 (May 23, 2013) includes a discussion of the history of Colorado's PSD program approvals for GHGs.

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: The interstate transport provisions in CAA section 110(a)(2)(D)(i) (also called ''good neighbor'' provisions) require each state to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the impacts of air pollutants transported across state lines. The two elements under section 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will (element 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (element 2) interfere with maintenance by any other state with respect to the same NAAQS. The two elements under section 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C (element 3) to prevent significant deterioration of air quality or (element 4) to protect visibility. In this action, EPA is addressing all four elements of CAA section 110(a)(2)(D)(i).

In this action, EPA is addressing the 2008 Pb and 2010 NO_2 NAAQS with regard to elements 1 (significant contribution to nonattainment) and 2 (interference with maintenance). EPA is addressing elements 3 (interference with PSD) and 4 (interference with visibility protection) of 110(a)(2)(D)(i) with regard to the 2008 Ozone, 2008 Pb and 2010 NO_2 NAAQS. We are not addressing elements 1 and 2 for the 2008 ozone NAAQS in this action. These elements will be addressed in a later rulemaking.

A. Evaluation of Significant Contribution to Nonattainment and Interference With Maintenance

2008 Pb NAAQS

Colorado's analysis of potential interstate transport for the 2008 Pb NAAQS includes considerations of Colorado's Pb emissions inventory, and the distance of Pb sources in Colorado to nearby states. The State's analysis is available in the docket for this action.

As noted in the 2011 Memo, 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) (elements 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.'' [4] 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. Colorado'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 Colorado sources have the combination of Pb emission levels and proximity to neighboring states to contribute significantly to nonattainment in or interfere with maintenance by other states for this NAAQS. Colorado's SIP is therefore adequate to ensure that such impacts do not occur. We are proposing to approve Colorado'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

Colorado's 2010 NO_2 submission notes that all states are currently designated by EPA as unclassifiable/attainment for NO_2, and determines that it is therefore unlikely that Colorado contributes to nonattainment or interferes with maintenance for NO_2 in any other state.

EPA recognizes the reasonableness of Colorado's conclusion, specifically with regard to element 1 (significant contribution to nonattainment).[5] In addition, EPA notes that the highest monitored NO_2 design values in each state bordering Colorado are significantly below the NAAQS (see Table 2, below).[6] This fact further supports the State's contention that significant contribution to nonattainment or interference with maintenance of the NO_2 NAAQS from Colorado is very unlikely based on the lack of areas with high levels of NO_2. This is especially relevant for element 2 (interference with maintenance), because in addition to the lack of areas violating the NO_2 NAAQS, there are also no areas near the State approaching violation of the 2010 NO_2 NAAQS which might therefore be expected to have difficulty maintaining the standard.

TABLE 2—HIGHEST MONITORED 2010 NO_2 NAAQS DESIGN VALUES

State	2011–2013 Design value	Percent of NAAQS (100 ppb)
Kansas	65 ppb	65.
Nebraska	No Data	No Data.
New Mexico	41 ppb	41.
Oklahoma	54 ppb	54.
South Dakota	37 ppb	37.
Utah	66 ppb	66.
Wyoming	35 ppb	35.

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

In addition to the monitored levels of NO_2 in states bordering Colorado being well below the NAAQS, Colorado's highest design value from 2011–2013 was also significantly below this NAAQS (62 ppb).[7]

Based on all of these factors, EPA concurs with the State's conclusion that Colorado 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 Colorado'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.

B. Evaluation of Interference With Measures To Prevent Significant Deterioration (PSD)

Colorado's certifications with regard to elements 3 and 4 of 110(a)(2)(D)(i) 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 comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD

[4] 2011 Memo at pg 8.

[5] EPA has not interpreted element 1 to literally mean contribution to designated nonattainment areas, and has applied this interpretation in comprehensive actions addressing elements 1 and 2 (See *e.g.,* Cross-State Air Pollution Rule, 76 FR 48208, August 8, 2011).

[6] EPA did not calculate a 2010 1-hour NO_2 design value in the state of Nebraska for the 2011–2013 design value period.

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

implementation rule(s).[8] As noted in Section VI.3 of this proposed action, Colorado has such a program, and EPA is therefore proposing to approve Colorado's SIP for the 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.

As stated in the 2013 Memo, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. One way a state may satisfy element 3 with respect to these sources is by citing an air agency's EPA-approved nonattainment NSR provisions addressing any pollutants for which the state has designated nonattainment areas. Colorado has a SIP-approved nonattainment NSR program which ensures regulation of major sources and major modifications in nonattainment areas.[9]

As Colorado's SIP meets PSD requirements for all regulated NSR pollutants, and contains a fully approved nonattainment NSR program, EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of element 3 of section 110(a)(2)(D)(i) for the 2008 ozone, 2008 Pb and 2010 NO_2 NAAQS.

C. Evaluation of Interference With Measures To Protect Visibility

To determine whether the CAA section 110(a)(2)(D)(i)(II) requirement for visibility protection is satisfied, the SIP must address the potential for interference with visibility protection caused by the pollutant (including precursors) to which the new or revised NAAQS applies. An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies the 110(a)(2)(D)(i)(II) requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. In the absence of a fully approved regional haze SIP, a state can still make a demonstration that satisfies the visibility requirement section of 110(a)(2)(D)(i)(II).[10]

Colorado submitted a regional haze SIP to EPA on May 25, 2011. EPA approved Colorado's regional haze SIP on December 31, 2012 (77 FR 76871). In early 2013, WildEarth Guardians and the National Parks Conservation Association (NPCA) filed separate petitions for reconsideration of certain aspects of EPA's approval of the Colorado's regional haze SIP.[11] After these petitions were filed, a settlement agreement was entered into concerning the Craig Generating Station by the petitioners, EPA, CDPHE, and Tri-State Generation and Transmission Association, Inc., and filed with the court on July 10, 2014.[12] In accordance with the settlement agreement, EPA requested and the court granted a voluntary remand to EPA of the portions of EPA's December 2012 regional haze SIP approval that related to Craig Unit 1. Because of this remand, and because the additional controls at the Craig facility will be implemented through a revision to the Colorado regional haze SIP that EPA has not yet acted on, EPA cannot rely on this approval as automatically satisfying element 4.

EPA does, however, consider other aspects of our approval of Colorado's regional haze SIP to be sufficient to satisfy this requirement. Specifically, EPA found that Colorado met its 40 CFR 51.308(d)(3)(ii) requirements to include in its regional haze SIP all measures necessary to (1) obtain its share of the emission reductions needed to meet the reasonable progress goals for any other state's Class I area to which Colorado causes or contributes to visibility impairment, and; (2) ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through a regional planning process. Colorado participated in a regional planning process with Western Regional Air Partnership (WRAP). In the regional planning process, Colorado analyzed the WRAP modeling and determined that emissions from the State do not significantly impact other states' Class I areas.[13] Colorado accepted and incorporated the WRAP-developed visibility modeling into its regional haze SIP, and the SIP included the controls assumed in the modeling. For these reasons, EPA determined that Colorado had satisfied the Regional Haze Rule requirements for consultation and included controls in the SIP sufficient to address the relevant requirements related to impacts on Class I areas in other states. Therefore, we are proposing to approve the Colorado SIP as meeting the requirements of element 4 of CAA section 110(a)(2)(D)(i) for the 2008 ozone, 2008 Pb 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 of the U.S. EPA (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.

As required by 40 CFR 51.166(q)(2)(iv), Colorado's SIP-approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD.[14] This suffices to meet the notice requirement of section 126(a).

Colorado has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. In summary, the SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2008 ozone, 2008 Pb 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

[8] See 2013 Memo.

[9] See Colorado Regulation No. 3, Part D, Section V, which was most recently approved by EPA in a final rulemaking dated February 13, 2014 (79 FR 8632).

[10] See 2013 Memo. In addition, EPA approved the visibility requirement of 110(a)(2)(D)(i) for the 1997 Ozone and $PM_{2.5}$ NAAQS for Colorado before taking action on the State's regional haze SIP. 76 FR 22036 (April 20, 2011).

[11] WildEarth Guardians filed its petition on February 25, 2013, and NPCA filed its petition on March 1, 2013.

[12] This settlement agreement is included in the docket for this action; *see also* Proposed Settlement Agreement, 79 FR 47636 (Aug. 14, 2014).

[13] See our proposed rulemaking on the Colorado regional Haze SIP, 77 FR 18052, March 26, 2012.

[14] See Colorado Regulation 3, Part D. IV.A.1.

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. Colorado revised statues, specifically the Colorado Air Pollution Prevention and Control Act (APPCA) Sections 25–7–105, 25–7–111, 42–4–301 to 42–4–316, 42–4–414 and Article 7 of Title 25, provide adequate authority for the State of Colorado APCD and AQCC to carry out its SIP obligations with respect to the 2008 ozone, 2008 Pb, and 2010 NO_2 NAAQS. The State receives Sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out Colorado's SIP requirements. The regulations cited by Colorado 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 Colorado's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2008 ozone, 2008 Pb, 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.[15]

On April 10, 2012 (77 FR 21453) EPA approved the Procedural Rules, Section 1.11.0, as adopted by the AQCC on January 16, 1998, into the Colorado SIP as meeting the requirements of section 128 of the Act. Section 1.11.0 specifies certain requirements regarding the composition of the AQCC and disclosure by its members of potential conflicts of interest. Details on how this portion of the Procedural Rules meets the requirements of section 128 are provided in our January 4, 2012 proposal notice (77 FR 235). In our April 10, 2012 action, we correspondingly approved Colorado's infrastructure SIP for the 1997 ozone NAAQS for element (E)(ii). Colorado's SIP continues to meet the requirements of section 110(a)(2)(E)(ii), and we propose to approve the infrastructure SIP for the 2008 ozone, 2008 Pb, and 2010 NO_2 NAAQS for this element.

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 Colorado AQCC Regulations listed in the State's certifications (Regulations 1, 3, 7, and Common Provisions Regulation) and contained within this docket provide authority to establish a program for measurements and testing of sources, including requirements for sampling and testing. Air Pollutant Emission Notice (APEN) requirements are defined in Regulation 3 and requires stationary sources to report their emissions on a regular basis through APENs. Regulation 3 also requires for monitoring to be performed in accordance with EPA accepted procedures, and record keeping of air pollutants. Additionally, Regulation 3 provides for a permitting program that establishes emission limitations and standards. Emissions must be reported by sources to the state for correlation with applicable emissions limitations and standards. Monitoring may be required for both construction and operating permits.

Additionally, Colorado 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. Colorado made its latest update to the NEI on December 31, 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 Colorado's SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2008 ozone, 2008 Pb, 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 [16]] and adequate contingency plans to implement such authority.''

Under CAA section 303, the 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.

APPCA Sections 25–7–112 and 25–7–113 provide APCD with general emergency authority comparable to that in section 303 of the Act. APPCA section 25–7–112(1) provides the Division of Administration in the CDPHE with the authority to maintain civil actions over the sources of air pollution discharges that constitute ''a clear, present, and immediate danger to the environment or to the health of the public.'' Specifically, the Division can seek a ''temporary restraining order, temporary injunction, or permanent injunction as provided for in the Colorado rules of civil procedure'' (C.R.S. section 25–7–112(1)(b)). This

[15] EPA's proposed rule notice (79 FR 71040, Dec. 1, 2014) includes a discussion of the legislative history of how states could meet the requirements of CAA section 128.

[16] Discussion of the requirements for meeting CAA section 303 is provided in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $p.m._{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under ''VI. Analysis of State Submittals, 8. Emergency powers.''

authority extends to discharges that constitute ''an immediate danger to the welfare of the public because such pollutants make habitation of residences or the conduct of businesses subjected to the pollutants extremely unhealthy or disruptive.'' (C.R.S. Section 25–7–113(1)).

These civil actions may be maintained ''in any district court of this state for the district in which the said activity or discharge is occurring.'' (C.R.S. Sections 25–7–112(1)(b); 25–7–113(1)(b)). Additionally, the action ''shall be given precedence over all other matters pending in such district court.'' (*Id*). As such, Colorado law provides statutory authority over sources of air pollution discharges that cause an ''immediate danger'' to public health, welfare, or the environment. This authority allows for the pursuit of immediate relief and provides precedence for such matters. Therefore, Colorado has comparable judicial authority to that provided to the Administrator in Section 303.

Similarly, APPCA section 25–7–112(1)(a) provides the Division of Administration in the CDPHE with the authority to issue ''cease-and-desist orders. . .requiring immediate discontinuance of such activity or the discharge of such pollutant into the atmosphere'' when the activity or discharge ''constitutes a clear, present, and immediate danger to the environment or to the health of the public.'' (C.R.S. Section 25–7–112(1)(a)). Further, ''upon receipt of such order, such person shall immediately discontinue such activity or discharge.'' (*Id*). This authority extends to discharges that constitute ''an immediate danger to the welfare of the public because such pollutants make habitation of residences or the conduct of businesses subjected to the pollutants extremely unhealthy or disruptive.'' (C.R.S. Section 25–7–113(1)).

These provisions also allow the Division to ''both issue such a cease-and-desist order and apply for any such restraining order or injunction'' (C.R.S. Sections 25–7–112(1)(c); 25–7–113(c)). Colorado law provides administrative authority over sources of air pollution discharges that cause an ''immediate danger'' to public health, welfare, or the environment. Furthermore, C.R.S. Sections 25–7–112(2)(b) allows the Governor to declare a state of air pollution emergency and take any and all actions necessary to protect the health of the public. This authority is comparable to that provided to the Administrator in Section 303.

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 can 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. The Denver Emergency Episode Plan, applicable to the Denver metropolitan area, satisfies the requirements of 40 CFR part 51, subpart H (See 74 FR 47888). The SIP therefore meets the requirements of 110(a)(2)(G). Based on the above analysis, we propose approval of Colorado's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2008 ozone, 2008 Pb, 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].

Colorado's statutory provision at Colorado APPCA Sections 25–7–105(1)(a)(I) gives the AQCC sufficient authority to meet the requirements of 110(a)(2)(H). Therefore, we propose to approve Colorado'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 Colorado SIP and determined public notification requirements are appropriate (45 FR 53147, Aug. 11, 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 Colorado'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 Colorado SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2008 ozone, 2008 Pb, 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.

Colorado's Regulation 3 Part A.VIII (Technical Modeling and Monitoring Requirements) requires estimates of ambient air concentrations be based on applicable air quality models approved by EPA. Final approval for Regulation 3 Part A.VIII became effective February 20, 1997 (62 FR 2910). Additionally, Regulation 3 Part D, Section VI.C. requires the Division to transmit to the Administrator of the U.S. EPA a copy of each permit application relating to a major stationary source or major modification subject to this regulation, and provide notice of every action related to the consideration of such permit.

Colorado has broad authority to develop and implement an air quality control program that includes conducting air quality modeling to predict the effect on ambient air quality of any emissions of any air pollutant for which a NAAQS has been promulgated and provide that modeling data to the EPA. This broad authority can be found in 25–7–102, C.R.S., which requires that

emission control measures be evaluated against economic, environmental, energy and other impacts, and indirectly authorizes modeling activities.[17] Colorado also has broad authority to conduct modeling and submit supporting data to EPA to satisfy federal non-attainment area requirements (25–7–105, 25–7–205.1, 25–7–301, and 25–7–302, C.R.S.). In addition to statutory authority, all state implementation plans and revisions of such plans must be submitted to Colorado's Legislature for review providing another layer of review and authorization for submittal to EPA (25–7–133(1), C.R.S.). The State also has the authority to submit any modeling data to EPA upon request under the Colorado Open Records Act (24–72–201 to 24–72–309, C.R.S.).

As a result, the SIP provides for such air quality modeling as the Administrator has prescribed. Therefore, we propose to approve the Colorado SIP as meeting the CAA section 110(a)(2)(K) for the 2008 ozone, 2008 Pb, 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 State of Colorado requires the owner or operator of a major stationary source to pay the Division any fee necessary to cover the reasonable costs of reviewing and acting upon any permit application. The collection of fees is described in AQCC Regulation 3, Part A.

We also note that the State has an EPA approved title V permit program (60 FR 4563, Jan. 24, 1995) which provides for collection of permitting fees. Final approval of the title V operating permit program became effective October 16, 2000 (65 FR 49919). Interim approval of Colorado's title V operating permit program became effective February 23, 1995 (60 FR 4563). As discussed in the proposed interim approval of the title V program (59 FR 52123, October 14, 1994), the State demonstrated that the fees collected were sufficient to administer the program.

Therefore, based on the State's experience in relying on the collection of fees as described in AQCC Regulation 3, 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 2008 ozone, 2008 Pb, 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 Colorado's SIP submittals (contained within this docket) meet the requirements of CAA section 110(a)(2)(M), so we propose to approve Colorado's SIP as meeting these requirements for the 2008 ozone, 2008 Pb, 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 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS: (A), (C) with respect to minor NSR and PSD requirements, (D)(i)(II) elements 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is proposing to approve element (B) for the 2008 Pb and 2008 ozone NAAQS and proposing to conditionally approve element (B) for the 2010 NO_2 NAAQS. Finally, EPA proposes approval of D(i)(I) elements 1 and 2 for the 2008 Pb and 2010 NO_2 NAAQS. EPA will act separately on infrastructure element (D)(i)(I), interstate transport elements 1 and 2 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).

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

List of Subjects in 40 CFR Part 52

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

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

[17] *See* Email from Robert True ''Response Requested for Element K on CO's iSIP'' April 6, 2015, available within docket.

Dated: May 13, 2015.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2015–13123 Filed 5–29–15; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0304; FRL–9928–51–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Montana on March 17, 2010, August 1, 2011, November 22, 2011, and September 19, 2014. The revisions are to the Administrative Rules of Montana (ARM) and include minor editorial and grammatical changes, updates to citations and references to federal and state laws and regulations, revisions to open burning rules, changes to the process for appealing air quality permits, and providing a process for revocation of air quality permits when owners cannot be found by mail. Also in this action, EPA is proposing to correct final rules pertaining to Montana's SIP. On January 29, 2010, EPA took direct final action to approve SIP revisions as submitted by the State of Montana on January 16, 2009 and May 4, 2009. EPA subsequently discovered an error in our January 29, 2010 direct final action related to ''incorporation by reference'' (IBR) materials and the associated regulatory text numbering. EPA is proposing to correct this error with today's action. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 1, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2010–0304, 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–2010–0304. 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 words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *ARM* mean or refer to the Administrative Rules of Montana.

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

(iv) The word or initials *Board* or *BER* mean or refer to the Montana Board of Environmental Review.

(v) The initials *CAMR* mean or refer to the Environmental Protection Agency's Clear Air Mercury Rule.

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

(vii) The initials *CFR* mean or refer to the United States Code of Federal Regulations.

(viii) The initials *DEQ* mean or refer to the Department of Environmental Quality.

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

(x) The initials *IBR* mean or refer to Incorporate by Reference.

(xi) The initials *MCA* mean or refer to the Montana Code Annotated.

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

(xiii) The initials *NESHAP* mean or refer to National Emission Standards for Hazardous Air Pollutants.

(xiv) The initials *NSPS* mean or refer to New Source Performance Standards.

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

(xvi) The word *State* means or refers to the State of Montana.