in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 30, 2016.

**Heather McTeer Toney,**

*Regional Administrator, Region 4.*

[FR Doc. 2016–16577 Filed 7–13–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2015–0252; FRL–9948–96-Region 4]**

## Air Plan Approval; Tennessee Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on March 13, 2014, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 nitrogen dioxide ($NO_2$) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP submission. TDEC certified that the Tennessee SIP contains provisions that ensure the 2010 $NO_2$ NAAQS is implemented, enforced, and maintained in Tennessee. With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting, and interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance, and visibility in other states, for which EPA is proposing no action through this rulemaking, EPA is proposing to find that Tennessee's infrastructure SIP submission, provided to EPA on March 13, 2014, satisfies the required infrastructure elements for the 2010 $NO_2$ NAAQS.

**DATES:** Written comments must be received on or before August 15, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0252 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Wong can be reached via electronic mail at *wong.richard@epa.gov or via telephone at (404) 562–8726.*

**SUPPLEMENTARY INFORMATION:**

### I. Background and Overview

On February 9, 2010 (75 FR 6474), EPA published a new 1-hour primary NAAQS for $NO_2$ at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour $NO_2$ NAAQS to EPA no later than January 22, 2013.[1]

This action is proposing to approve Tennessee's infrastructure SIP submission for the applicable requirements of the 2010 1-hour $NO_2$ NAAQS, with the exception of the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J), and the interstate transport provisions of prongs 1, 2, and 4 of section 110(a)(2)(D)(i). On March 18, 2015, EPA approved Tennessee's March 13, 2014 infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) for the 2010 1-hour $NO_2$

[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term ''Tennessee Air Pollution Control Regulations'' or ''Regulation'' indicates that the cited regulation has been approved into Tennessee's federally-approved SIP. The term ''Tennessee Annotated Code'', or ''TCA'', indicates cited Tennessee state statutes, which are not a part of the SIP unless otherwise indicated.

NAAQS. *See* 80 FR 14019. Therefore, EPA is not proposing any action pertaining to these requirements. With respect to Tennessee's infrastructure SIP submission related to the interstate transport provisions of prongs 1, 2 and 4 of section 110(a)(2)(D)(i), EPA is not proposing any action today. EPA will act on these provisions in a separate action. For the aspects of Tennessee's submittal proposed for approval today, EPA notes that the Agency is not approving any specific rule, but rather proposing that Tennessee's already approved SIP meets certain CAA requirements.

## II. What elements are required under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2010 1-hour $NO_2$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned previously, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below and in EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2).'' [2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources [3]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas [4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

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

EPA is acting upon the SIP submission from Tennessee that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 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's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

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

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] 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.

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] As mentioned previously, this element is not relevant to this proposed rulemaking.

[5] 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.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] 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.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] 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.[9]

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.[10]

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.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed

[6] 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)).

[7] 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.

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

[9] 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.

[10] 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.

[11] 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.

[12] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean

this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] 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 implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including GHGs. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 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 implementation plan 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 new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions. [14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility

Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[13] 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.3d7 (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.

[14] 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.

requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

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

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

1. 110(a)(2)(A): *Emission limits and other control measures:* Section 110(a)(2)(A) requires that each implementation plan 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. The Tennessee Code Annotated section 68–201–105(a) provides TDEC authority to establish limits and measures as well as schedules for compliance to meet the applicable requirements of the CAA. Emission limits and other control measures, means, and techniques as well as schedules and timetables for activities that contribute to $NO_2$ concentrations in the ambient air are found in Regulations 1200–03–03, *Ambient Air Quality Standards,* 1200–03–19, *Emission Standards and Monitoring Requirements for Additional Control Areas,* and 1200–03–27, *Nitrogen Oxides.* EPA has made the preliminary determination that the cited provisions adequately address 110(a)(2)(A) for the 2010 1-hour $NO_2$ NAAQS.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[18]

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

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* SIPs are required to provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. TCA 68–201–105(b)(4) provides TDEC with the authority to collect and disseminate information relating to air quality and pollution and the prevention, control, supervision, and abatement thereof. Annually, States develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[19] On June 30, 2015, Tennessee submitted its monitoring network plan to EPA, and on October 26, 2015, EPA approved this plan. Tennessee's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2015–0252. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2010 1-hour $NO_2$ NAAQS.

3. 110(a)(2)(C) *Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements; enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or

[15] 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).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] 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).

[18] On June 12, 2015, EPA published a final action entitled, ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction.'' *See* 80 FR 33840.

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

unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). To satisfy the requirements of 110(a)(2)(C), Tennessee cites to Regulations 1200–03–09, *Construction and Operating Permits,* and 1200–03–13, *Violation.* These provisions of Tennessee's SIP pertain to the construction and modification of stationary sources and the enforcement of air pollution control regulations. As discussed further below, in this action EPA is only proposing to approve the enforcement, and the regulation of minor sources and minor modifications aspects of Tennessee's section 110(a)(2)(C) infrastructure SIP submission.

*Enforcement:* Regulation 1200–03–13, *Enforcement* provides for enforcement of emission limits and control measures and construction permitting for new or modified stationary sources. Also note, under TCA 68–201–116, *Orders and assessments of damages and civil penalty—Appeal,* the State's Technical Secretary is authorized to issue orders requiring correction of violations of any part of the Tennessee Air Quality Act, or of any regulation promulgated under this State statute. Violators are subject to civil penalties of up to $25,000 dollars per day for each day of violation and for any damages to the State resulting from the violations.

*Preconstruction PSD Permitting for Major Sources:* With respect to Tennessee's March 13, 2014, infrastructure SIP submission related to the PSD permitting requirements for major sources of section 110(a)(2)(C), EPA took final action to approve these provisions for the 2010 1-hour $NO_2$ NAAQS on March 18, 2015 (80 FR 14019).

*Regulation of minor sources and modifications:* Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2010 1-hour $NO_2$ NAAQS. Tennessee has a SIP-approved minor NSR permitting program at Regulations 1200–03–09–.01, *Construction Permits,* and 1200–03–09–.03, *General Provisions,* that regulates the preconstruction permitting of minor modifications and construction of minor stationary sources.

EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for program enforcement of control measures and regulation of minor sources and modifications related to the 2010 1-hour $NO_2$ NAAQS.

4. 110(a)(2)(D)(i) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components; 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1''), and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4'').

*110(a)(2)(D)(i)(I)—prongs 1 and 2:* EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) because Tennessee's 2010 1-hour $NO_2$ NAAQS infrastructure submission did not address prongs 1 and 2.

*110(a)(2)(D)(i)(II)—prong 3:* With respect to Tennessee's infrastructure SIP submission related to the interstate transport requirements for PSD of section 110(a)(2)(D)(i)(II) (prong 3), EPA took final action to approve Tennessee's March 13, 2014, infrastructure SIP submission regarding prong 3 of D(i) for the 2010 1-hour $NO_2$ NAAQS on March 18, 2015. *See* 80 FR 14019.

*110(a)(2)(D)(i)(II)—prong 4:* EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong 4) and will consider these requirements in relation to Tennessee's 2010 1-hour $NO_2$ NAAQS infrastructure submission in a separate rulemaking.

5. 110(a)(2)(D)(ii) *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Regulation 1200–03–09-.03,*General Provisions,* requires the permitting authority to notify air agencies whose areas may be affected by emissions from a source. EPA is unaware of any pending obligations for the State of Tennessee pursuant to sections 115 or 126 of the CAA. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2010 1-hour $NO_2$ NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Tennessee's SIP as meeting the requirements of sections 110(a)(2)(E). EPA's rationale for this proposals respecting each section of 110(a)(2)(E) is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), TCA 68–201–105, *Powers and duties of board—Notification of vacancy—Termination due to vacancy,* gives the Tennessee Air Pollution Control Board the power and duty to promulgate rules and regulations to implement the Tennessee Air Quality Act. The Board may define ambient air quality standards, set emission standards, set forth general policies or plans, establish a system of permits, and identify a schedule of fees for review of plans and specifications, issuance or renewal of permits or inspection of air contaminant sources.

TAPCR 1200–03–26, *Administrative Fees Schedule,* establishes construction fees, annual emission fees, and permit review fees sufficient to supplement existing State and Federal funding and to cover reasonable costs associated with the administration of Tennessee's air pollution control program. These costs include costs associated with the review of permit applications and reports, issuance of permits, source inspections and emission unit observations, review and evaluation of stack and/or ambient monitoring results, modeling, and costs associated with enforcement actions.

TCA 68–201–115, *Local pollution control programs—Exemption from state supervision—Applicability of part to air contaminant sources burning wood waste—Open burning of wood*

*waste,* states that ''Any municipality or county in this state may enact, by ordinance or resolution respectively, air pollution control regulations not less stringent than the standards adopted for the state pursuant to this part, or any such municipality or county may also adopt or repeal an ordinance or resolution which incorporates by reference any or all of the regulations of the board, or any federal regulations including any changes in such regulations, when such regulations are properly identified as to date and source.'' Before such ordinances or resolutions become effective, the municipality or county must receive a certificate of exemption from the Board to enact local regulations in the State. In granting any certificate of exemption, the State of Tennessee reserves the right to enforce any applicable resolution, ordinance, or regulation of the local program.

TCA 68–201–115 also directs TDEC to ''frequently determine whether or not any exempted municipality or county meets the terms of the exemption granted and continues to comply with this section.'' If TDEC determines that the local program does not meet the terms of the exemption or does not otherwise comply with the law, the Board may suspend the exemption in whole or in part until the local program complies with the State standards.

As evidence of the adequacy of TDEC's resources, EPA submitted a letter to Tennessee on March 9, 2015, outlining section 105 grant commitments and the current status of these commitments for fiscal year 2014. The letter EPA submitted to Tennessee can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2015–0252. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Tennessee satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2014, therefore Tennessee's grants were finalized. EPA has made the preliminary determination that Tennessee has adequate authority and resources for implementation of the 2010 1-hour $NO_2$ NAAQS.

Section 110(a)(2)(E)(ii) requires that the state to comply with section 128 of the CAA. Section 128 requires that the SIP provide: (a)(1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (a)(2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. Section 110(a)(2)(E)(ii) obligations for the 2010 1-hour $NO_2$ NAAQS and the requirements of CAA section 128 are met in Regulation 0400–30–17, *Conflict of Interest.* Under this regulation, the Tennessee board with authority over air permits and enforcement orders is required to determine annually and after receiving a new member that at least a majority of its members represent to public interest and do not derive any significant portion of income from persons subject to such permits and enforcement orders. Further, the board cannot act to hear contested cases until it has determined it can do so consistent with CAA section 128. The regulation also requires TDEC's Technical Secretary and board members to declare any conflict-of-interest in writing prior to the issuance of any permit, variance or enforcement order that requires action on their part.

EPA has made the preliminary determination that the State has adequately addressed the requirements of section 128, and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements. Therefore, EPA is proposing to approve Tennessee's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

7. 110(a)(2)(F) *Stationary source monitoring system:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing (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 this section, which reports shall be available at reasonable times for public inspection. Tennessee's infrastructure SIP submission describes how the State establishes requirements for emissions compliance testing and utilizes emissions sampling and analysis. It further describes how the State ensures the quality of its data through observing emissions and monitoring operations. These infrastructure SIP requirements are codified at Regulation 1200–03–10, *Required Sampling, Recording, and Reporting.* This rule requires owners or operators of stationary sources to compute emissions, submit periodic reports of such emissions and maintain records as specified by various regulations and permits, and to evaluate reports and records for consistency with the applicable emission limitation or standard on a continuing basis over time. The monitoring data collected and records of operations serve as the basis for a source to certify compliance, and can be used by Tennessee as direct evidence of an enforceable violation of the underlying emission limitation or standard. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the Tennessee SIP.

Additionally, Tennessee is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Tennessee made its latest update to the 2011 NEI on April 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.* EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the stationary source monitoring systems related to the 2010 1-hour $NO_2$ NAAQS. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G) *Emergency Powers:* Section 110(a)(2)(G) of the Act requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Tennessee's emergency powers are outlined in TAPCR 1200–03–15, *Emergency Episode Plan,* which establishes the criteria for declaring an air pollution

episode (air pollution alert, air pollution warning, or air pollution emergency), specific emissions reductions for each episode level, and emergency episode plan requirements for major sources located in or significantly impacting a nonattainment area. Additional emergency powers are codified in TCA 68–201–109, *Emergency Stop Orders for Air Contaminant Sources*. Under TCA 68–201–109, if the Commissioner of TDEC finds that emissions from the operation of one or more sources are causing imminent danger to human health and safety, the Commissioner may, with the approval of the Governor, order the source(s) responsible to reduce or discontinue immediately its (their) air emissions. Additionally, this State law requires a hearing to be held before the Commissioner within 24 hours of any such order.

Regarding the public welfare and environment, TCA 68–201–106, *Matters to be considered in exercising powers,* states that ''In exercising powers to prevent, abate and control air pollution, the board or department shall give due consideration to all pertinent facts, including, but not necessarily limited to: (1) The character and degree of injury to, or interference with, the protection of the health, general welfare and physical property of the people . . .'' Also, TCA 68–201–116, *Orders and assessments of damages and civil penalty Appeal,* provides in subsection (a) that if the Tennessee technical secretary discovers that any State air quality regulation has been violated, the Tennessee technical secretary may issue an order to correct the violation, and this order shall be complied with within the time limit specified in the order. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for emergency powers related to the 2010 1-hour $NO_2$ NAAQS2010 1-hour $SO_2$ NAAQS. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *Future SIP revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan (i) 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) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. As previously discussed, Tennessee is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Tennessee.

Section 68–201–105(a) of the Tennessee Air Quality Act authorizes the Tennessee Air Pollution Control Board to promulgate rules and regulations to implement this State statute, including setting and implementing ambient air quality standards, emission standards, general policies or plans, a permits system, and a schedule of fees for review of plans and specifications, issuance or renewal of permits, and inspection of sources. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2010 1-hour $NO_2$ NAAQS when necessary. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) *Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve Tennessee's infrastructure SIP submission for the 2010 1-hour $NO_2$ NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127; and visibility protection requirements of part C of the Act. With respect to Tennessee's infrastructure SIP submission related to the preconstruction PSD permitting requirements of section 110(a)(2)(J), EPA took final action to approve Tennessee's March 13, 2014, 2010 1-hour $NO_2$ NAAQS infrastructure SIP for these requirements on March 18, 2015. *See* 80 FR 14019. EPA's rationale for its proposed action regarding applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility protection requirements is described below.

110(a)(2)(J) (121 consultation)—*Consultation with government officials:* Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and Federal Land Managers carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. Regulation 1200–03–34, *Conformity,* as well as Tennessee's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. TAPCR 1200–03–34, *Conformity,* provides for interagency consultation on transportation and general conformity issues. Tennessee adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. Required partners covered by Tennessee's consultation procedures include Federal, state and local transportation and air quality agency officials. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with government officials related to the 2010 1-hour $NO_2$ NAAQS when necessary. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(J) consultation with government officials.

110(a)(2)(J) (127 public notification)—*Public notification:* These requirements are met through Regulation 1200–03–15, *Emergency Episode Plan,* which requires that TDEC notify the public of any air pollution alert, warning, or emergency. The TDEC Web site also provides air quality summary data, air quality index reports and links to more information regarding public awareness of measures that can prevent such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2010 1-hour $NO_2$ NAAQS when necessary. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submissions with respect to section 110(a)(2)(J) public notification.

110(a)(2)(J)—*Visibility protection:* EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals. As such,

EPA has made the preliminary determination that it does not need to address the visibility protection element of section 110(a)(2)(J) in Tennessee's infrastructure SIP related to the 2010 1-hour $NO_2$ NAAQS.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. Regulation 1200–03–09-.01(4), *Prevention of Significant Air Quality Deterioration,* specifies that air modeling be conducted in accordance with 40 CFR part 51, Appendix W ''Guideline on Air Quality Models.'' Tennessee also states that it has personnel with training and experience to conduct dispersion modeling consistent with models approved by EPA protocols. Also note that TCA 68–201–105(b)(7) grants TDEC the power and duty to collect and disseminate information relative to air pollution. Additionally, Tennessee supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for NOx, which includes $NO_2$. Taken as a whole, Tennessee's regulations, statutes and practices demonstrate that Tennessee has the authority to collect and provide relevant data for the purpose of predicting the effect on ambient air quality of the 1-hour $NO_2$ NAAQS. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2010 1-hour $NO_2$ NAAQS when necessary.

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

Funding for the Tennessee air permit program comes from a processing fee, submitted by permit applicants, required by Regulations 1200–03–26.02(5), *Construction Fee,* and 1200–03–26.02(9), *Annual Emissions Fees for Major Sources.* Tennessee ensures this is sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. Additionally, Tennessee has a fully approved title V operating permit program at Regulation 1200–03–09 [20] that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Tennessee's SIP and practices adequately provide for permitting fees related to the 2010 $NO_2$ NAAQS, when necessary. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation/participation by affected local entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. TCA 68–201–105, *Powers and duties of board Notification of vacancy Termination due to vacancy,* authorizes and requires the Tennessee Air Pollution Control Board to promulgate rules and regulations related to consultation under the provisions of the State's Uniform Administrative Procedures Act. TCA 4–5–202, *When hearings required,* requires agencies to precede all rulemaking with a notice and public hearing, except for exemptions. TCA 4–5–203, *Notice of hearing,* states that whenever an agency is required by law to hold a public hearing as part of its rulemaking process, the agency shall: ''(1) Transmit written notice of the hearings to the secretary of state for publication in the notice section of the administrative register Web site . . . and (2) Take such other steps as it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed rulemaking.'' TCA 68–201–105(b)(7) authorizes and requires TDEC to ''encourage voluntary cooperation of affected persons or groups in preserving and restoring a reasonable degree of air purity; advise, consult and cooperate with other agencies, persons or groups in matters pertaining to air pollution; and encourage authorized air pollution agencies of political subdivisions to handle air pollution problems within their respective jurisdictions to the greatest extent possible and to provide technical assistance to political subdivisions . . .''. TAPCR 1200–03–34, *Conformity,* requires interagency consultation on transportation and general conformity issues. Additionally, TDEC has, in practice, consulted with local entities for the development of its transportation conformity SIP and has worked with the Federal Land Managers as a requirement of EPA's regional haze rule. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with affected local entities related to the 2010 1-hour $NO_2$ NAAQS when necessary. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(M).

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

## V. Proposed Action

With the exception of the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), prong 3 of (D)(i), and (J) and the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility of prongs 1, 2, and 4 of section 110(a)(2)(D)(i), EPA is proposing to approve that Tennessee's March 13, 2014, SIP submission for the 2010 1-hour $NO_2$ NAAQS has met the above-described infrastructure SIP requirements. EPA is proposing to approve Tennessee's infrastructure SIP submission for the 2010 1-hour $SO_2$ NAAQS because the submission is consistent with section 110 of the CAA.

## VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 30, 2016.

**Heather McTeer Toney,**

*Regional Administrator, Region 4.*

[FR Doc. 2016–16514 Filed 7–13–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2016–0106; FRL–9948–94–Region 4]**

### Air Plan Approval; NC; Fine Particulate Matter National Ambient Air Quality Standards Revision

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality's (NCDEQ) Division of Air Quality (DAQ) on December 11, 2015, that incorporates amendments to the state rules reflecting the 2012 national ambient air quality standards for fine particulate matter. EPA is approving this SIP revision because the State has demonstrated that it is consistent with the Clean Air Act.

**DATES:** Written comments must be received on or before August 15, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0106 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sanchez can be reached via telephone at (404) 562–9644 or via electronic mail at *sanchez.madolyn@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Final Rules Section of this **Federal Register**, EPA is approving the State's implementation plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: June 30, 2016.

**Heather McTeer Toney,**

*Regional Administrator, Region 4.*

[FR Doc. 2016–16455 Filed 7–13–16; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket Nos. 11–42, 09–197 and 10–90; Report No. 3046]**

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

**AGENCY:** Federal Communications Commission.

**ACTION:** Petitions for reconsideration and clarification.

**SUMMARY:** Petitions for Reconsideration and Clarification (Petitions) have been filed in the Commission's rulemaking proceeding by Thomas C. Power on behalf of CTIA, Kevin G. Rupy on behalf of United States Telecom Association, Colin W. Scott on behalf of Pennsylvania Public Utility Commission, John J. Heitmann on behalf of Joint Lifeline ETC Petitioners, John T. Nakahata on behalf of General Communication, Inc., Michael R. Romano on behalf of NTCA & WTA, Mitchell F. Brecher on behalf of TracFone Wireless, Inc., and David Springe on behalf of NASUCA.

**DATES:** Oppositions to the Petitions must be filed on or before July 29, 2016.