### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**International Aero Engines AG:** Docket No. FAA–2016–7099; Directorate Identifier 2016–NE–15–AD.

**(a) Comments Due Date**

We must receive comments by September 19, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to International Aero Engines (IAE) V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, V2533–A5, V2525–D5, V2528–D5, and V2531–E5 turbofan engines with No. 3 bearing serial numbers listed in Appendix 1 of IAE Non-Modification Service Bulletin (NMSB) V2500–ENG–72–0671, dated March 22, 2016.

**(d) Unsafe Condition**

This AD was prompted by several in-flight shutdowns that resulted from premature failure of the No. 3 bearing. We are issuing this AD to prevent failure of the No. 3 bearing, failure of one or more engines, loss of thrust control, and loss of the airplane.

**(e) Compliance**

Comply with this AD within the compliance times specified, unless already done.

(1) Prior to accumulating 125 flight hours after the effective date of this AD, inspect the master magnetic chip detector (MMCD) for metallic debris. If no metallic debris is found during the MMCD inspection, repeat the inspection within every 125 flight hours.

(2) If metallic debris is found during the MMCD inspection, evaluate the debris using paragraph 2.B. of the Accomplishment Instructions in IAE NMSB V2500–ENG–72–0671, dated March 22, 2016. Perform additional inspections or remove the engine from service in accordance with the Accomplishment Instructions in IAE NMSB V2500–ENG–72–0671.

(3) Remove the No. 3 bearing from service at the next engine shop visit and replace it with a bearing part/serial number combination not listed in Appendix 1 of IAE NMSB V2500–ENG–72–0671, dated March 22, 2016.

**(f) Mandatory Terminating Action**

Removal of the No. 3 bearing from service at the next engine shop visit and replacement with a bearing not listed in Appendix 1 of IAE NMSB V2500–ENG–72–0671, dated March 22, 2016, is terminating action to this AD.

**(g) Definition**

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

**(h) Alternative Methods of Compliance (AMOCs)**

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE–AD–AMOC@faa.gov.*

**(i) Related Information**

(1) For more information about this AD, contact Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov*.

(2) IAE NMSB V2500–ENG–72–0671, dated March 22, 2016, can be obtained from IAE using the contact information in paragraph (i)(3) of this proposed AD.

(3) For service information identified in this proposed AD, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: 860–565–0140; email: *help24@pw.utc.com;* Internet: *http://fleetcare.pw.utc.com.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on July 13, 2016.

**Colleen M. D'Alessandro,**

*Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2016–17159 Filed 7–20–16; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2014–0428; FRL–9949–38–Region 4]**

## Air Plan Approval; North Carolina; Infrastructure Requirements for the 2012 $PM_{2.5}$ 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 North Carolina, through the Department of Environmental Quality (DEQ), formerly known as the Department of Environment and Natural Resources (DENR), Division of Air Quality (DAQ), on December 4, 2015, for inclusion into the North Carolina SIP.

This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) 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. DAQ certified that the North Carolina SIP contains provisions that ensure the 2012 Annual $PM_{2.5}$ NAAQS is implemented, enforced, and maintained in North Carolina. EPA is proposing to determine that portions of North Carolina's infrastructure SIP submission, provided to EPA on December 4, 2015, satisfy certain infrastructure elements for the 2012 Annual $PM_{2.5}$ NAAQS.

**DATES:** Written comments must be received on or before August 22, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0428 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:** Tiereny Bell, 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. Bell can be reached via electronic mail at *bell.tiereny@epa.gov* or via telephone at (404) 562–9088.

**SUPPLEMENTARY INFORMATION:**

## I. Background and Overview

On December 14, 2012 (78 FR 3086, January 15, 2013), EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter ($\mu g/m^3$) to 12.0 $\mu g/m^3$. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable 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 elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2012 Annual $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015.[1]

This rulemaking is proposing to approve portions of North Carolina's $PM_{2.5}$ infrastructure SIP submissions [2] for the applicable requirements of the 2012 Annual $PM_{2.5}$ NAAQS, with the exception of the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4) and preconstruction Prevention of Significant Deterioration (PSD) permitting requirements for major sources of section 110(a)(2)(C) and (J), for which EPA is not proposing any action in this rulemaking regarding these requirements. For the aspects of North Carolina's submittal proposed for approval in this rulemaking, EPA notes that the Agency is not approving any specific rule, but rather proposing that North Carolina'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.

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 above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are summarized 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 110(a)(2).'' [3]

- 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 [4]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution

[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 noted, the cited regulation (North Carolina Administrative Code (NCAC)) has either been approved, or submitted for approval into North Carolina's federally-approved SIP. The North Carolina statutory provisions cited to herein (North Carolina General Statutes (NCGS)) have not been approved into the North Carolina SIP, unless otherwise noted.

[2] North Carolina's 2012 Annual $PM_{2.5}$ NAAQS infrastructure SIP submission dated December 4, 2015, is referred to as ''North Carolina's $PM_{2.5}$ infrastructure SIP'' in this action.

[3] 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).

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

- 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 [5]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (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 North Carolina that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 Annual $PM_{2.5}$ 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 (NNSR) 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.[6] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, 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.[7] 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.[8] 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.[9] 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

[5] As mentioned above, this element is not relevant to this proposed rulemaking.

[6] 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.

[7] 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)).

[8] 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.

[9] 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).

elements and sub-elements of the same infrastructure SIP submission.[10]

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.[11]

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.[12] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[13] EPA developed 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.[14] 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 new source review (NSR) pollutants,

[10] 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.

[11] 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.

[12] 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.

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

[14] 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 United States (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. On March 17, 2016, EPA released a memorandum titled, ''Information on the Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' to provide guidance to states for interstate transport requirements specific to the $PM_{2.5}$ NAAQS.

including greenhouse gases. 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 Annual $PM_{2.5}$ 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.[15] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

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

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] 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.[18]

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

The North Carolina infrastructure submission addresses the provisions of

[15] 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.

[16] 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).

[17] 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).

[18] 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).

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. These requirements are met through several North Carolina Administrative Code (NCAC) regulations. Specifically, 15A NCAC 2D .0500 *Emission Control Standards* establishes emission limits for $PM_{2.5}$. The following State rules address additional control measures, means and techniques: 15A NCAC 2D .0600 *Monitoring: Recordkeeping: Reporting,* and 15A NCAC 2D .2600 *Source Testing.* In addition North Carolina General Statutes (NCGS)143–215.107(a)(5), *Air quality standards and classifications,* provides the North Carolina Environmental Management Commission (EMC) with the statutory authority, ''To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards.'' EPA has made the preliminary determination that the provisions contained in these regulations, and North Carolina's statutory authority are adequate for Section 110(a)(2)(A) for the 2012 Annual $PM_{2.5}$ NAAQS.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM 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.[19]

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:* 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. NCGS 143–215.107(a)(2), *Air quality standards and classifications,* provides the EMC with the statutory authority ''To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.''

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, and includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[20] The latest monitoring network plan for North Carolina was submitted to EPA on July 23, 2015, and on November 19, 2015, EPA approved this plan. North Carolina's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0428.

NCGS 143–215.107(a)(2), EPA regulations, along with North Carolina's Ambient Air Monitoring Network Plan, 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. EPA has made the preliminary determination that North Carolina's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2012 Annual $PM_{2.5}$ NAAQS.

*3. 110(a)(2)(C) Programs 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 unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). To meet these obligations, North Carolina cited the following State regulations: 15A NCAC 2D .0500 *Emissions Control Standards;* 15A NCAC 2D .0530 *Prevention of Significant Deterioration;* 15A NCAC 2D .0531 *Sources in Nonattainment Areas;* and 15A NCAC 2Q .0300 *Construction Operation Permits.* Collectively, these regulations enable North Carolina to regulate sources contributing to the 2012 Annual $PM_{2.5}$ NAAQS through enforceable permits. North Carolina also cited to the following statutory provisions as supporting this element: NCGS 143–215.108, *Control of sources of air pollution; permits required;* NCGS 143–215.107(a)(7), *Air quality standards and classifications;* and NCGS 143–215.6A, 6B, and 6C, *Enforcement procedures: Civil penalties, criminal penalties,* and *injunctive relief.*

In this action, EPA is proposing to approve North Carolina's infrastructure SIP for the 2012 Annual $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP for enforcement of $PM_{2.5}$ emissions controls and measures and the regulation of minor sources and modifications to assist in the protection of air quality in nonattainment, attainment or unclassifiable areas.

*Enforcement:* DAQ's above-described, SIP-approved regulations provide for enforcement of $PM_{2.5}$ emission limits and control measures through enforceable permits. In addition, North Carolina cited NCGS 143–215.6A, 6B, and 6C, which provides NC DAQ with the statutory authority to seek civil and criminal penalties, and injunctive relief to enforce air quality rules.

*Preconstruction PSD Permitting for Major Sources:* With respect to North Carolina's infrastructure SIP submission related to the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), EPA is not proposing any action in this rule making regarding these requirements and instead will act on this portion of the submission in a separate action.

[19] 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.

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

*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 2012 Annual $PM_{2.5}$ NAAQS. Regulation 15A NCAC 2Q .0300 *Construction Operation Permits* governs the preconstruction permitting of minor modifications and construction of minor stationary sources.

EPA has made the preliminary determination that North Carolina's SIP is adequate for enforcement of control measures and regulation of minor sources and modifications related to the 2012 Annual $PM_{2.5}$ NAAQS.

*4. 110(a)(2)(D)(i)(I) and (II) 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 has 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 from 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''). EPA is not proposing any action in this rulemaking related to the interstate transport requirements of section 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II) (prongs 1 through 4).

*5. 110(a)(2)(D)(ii) Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement. 15A NCAC 2D .0530 *Prevention of Significant Deterioration* and 15A NCAC 2D .0531 *Sources of Nonattainment Areas* provide how DAQ will notify neighboring states of potential impacts from new or modified sources consistent with the requirements of 40 CFR 51.166. These regulations require DAQ to provide an opportunity for a public hearing to the public, which includes state or local air pollution control agencies, ''whose lands may be affected by emissions from the source or modification'' in North Carolina. In addition, North Carolina does not have any pending obligation under sections 115 and 126 of the CAA. Accordingly, EPA has made the preliminary determination that North Carolina's SIP is adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2012 Annual $PM_{2.5}$ 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 North Carolina's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii). EPA's rationale for this proposal respecting each sub-element is described below.

To satisfy the requirements of sections 110(a)(2)(E)(i) and (iii), North Carolina's infrastructure SIP submission cites several regulations. Rule 15A NCAC 2Q .0200 ''*Permit Fees,*'' provides the mechanism by which stationary sources that emit air pollutants pay a fee based on the quantity of emissions. State statutes NCGS 143–215.3, *General powers of Commission and Department: Auxiliary powers,* and NCGS 143–215.107(a)(1), *Air quality standards and classifications,* provide the EMC with the statutory authority ''[t]o prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.'' NCGS 143–215.112, *Local air pollution control programs,* provides the EMC with the statutory authority ''to review and have general oversight and supervision over all local air pollution control programs.'' North Carolina has three local air agencies located in Buncombe, Forsyth, and Mecklenburg Counties that implement the air program in these areas.

As further evidence of the adequacy of DAQ's resources, EPA submitted a letter to North Carolina on April 19, 2016, outlining 105 grant commitments and the current status of these commitments for fiscal year 2015. The letter EPA submitted to North Carolina can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0428. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. North Carolina satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2015, therefore North Carolina's grants were finalized and closed out. Collectively, these rules and commitments provide evidence that DAQ has adequate personnel, funding, and legal authority to carry out the State's implementation plan and related issues. EPA has made the preliminary determination that North Carolina has adequate resources and authority to satisfy sections 110(a)(2)(E)(i) and (iii) of the 2012 Annual $PM_{2.5}$ NAAQS.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that the SIP provide: (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 (2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. For purposes of section 128(a)(1), as of October 1, 2012, North Carolina has no boards or bodies with authority over air pollution permits or enforcement actions. The authority to approve CAA permits or enforcement orders are instead delegated to the Secretary of the Department of Environment and Natural Resources (DENR) and his/her delegatee. As such, a ''board or body'' is not responsible for approving permits or enforcement orders in North Carolina, and the requirements of section 128(a)(1) are not applicable.

On November 3, 2015 (80 FR 67645), EPA approved North Carolina's section 128(a)(2) conflict of interest disclosure requirements for administrative law judges (ALJs)[21] through NCGS 7A–754 of the North Carolina General Statues, which contains provisions related to the Office of Administrative Hearings addressing these requirements for the ALJ. NCGS 7A–754 requires ALJs to act impartially, which broadly includes financial considerations, relationships, and other associations. ALJs are prohibited from participating in any

[21] EPA has determined that ALJs in North Carolina are authorized to approve permits and enforcement orders on appeal and that the ALJs must therefore meet the conflict of interest disclosure requirements of section 128(a)(2).

matter in which the ALJs impartiality might reasonably be questioned or the ALJ must disclose the potential conflict of interest on the record in the proceeding. In the case of such disclosures, the parties to the matter must agree that the disclosed conflict of interest is immaterial before the ALJ may continue to participate in the matter.

EPA has made the preliminary determination that the State has adequately addressed the requirements of section 128(a), 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 North Carolina'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 and Reporting:* 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. North Carolina's infrastructure SIP submission describes how the State establishes requirements for emissions compliance testing and utilizes emissions sampling and analysis. DAQ uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. North Carolina meets these requirements through 15A NCAC 2D .0604 *Exceptions to Monitoring and Reporting Requirements;* 15A NCAC 2D .0605 *General Recordkeeping and Reporting Requirements;* 15A NCAC 2D .0611 *Monitoring Emissions from Other Sources;* 15A NCAC 2D .0612 *Alternative Monitoring and Reporting Procedures;* 15A NCAC 2D .0613 *Quality Assurance Program;* and 15A NCAC 2D .0614 *Compliance Assurance Monitoring.* In addition, 15A NCAC 2D .0605(c) *General Recordkeeping and Reporting Requirements* allows for the use of credible evidence in the event that the DAQ Director has evidence that a source is violating an emission standard or permit condition, the Director may require that the owner or operator of any source submit to the Director any information necessary to determine the compliance status of the source. In addition, EPA is unaware of any provision preventing the use of credible evidence in the North Carolina SIP. Also, NCGS 143–215.107(a)(4), *Air quality standards and classifications,* provides the EMC with the statutory authority ''To collect information or to require reporting from classes of sources which, in the judgment of the [EMC], may cause or contribute to air pollution.''

Stationary sources are required to submit periodic emissions reports to the State by Rule 15A NCAC 2Q .0207 ''Annual Emissions Reporting.'' North Carolina is also 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. *See* 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 dioxides, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. North Carolina made its latest update to the 2011 NEI on June 3, 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 North Carolina's SIP and practices are adequate for the stationary source monitoring systems obligations for the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve North Carolina's infrastructure SIP submission with respect to section 110(a)(2)(F).

*8. 110(a)(2)(G) Emergency powers:* This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. North Carolina's infrastructure SIP submission cites 15A NCAC 2D .0300 *Air Pollution Emergencies* as identifying air pollution emergency episodes and preplanned abatement strategies, and provides the means to implement emergency air pollution episode measures. Under NCGS 143–215.3(a)(12), *General powers of Commission and Department; auxiliary powers,* if NC DENR finds that such a ''condition of . . . air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department [NC DEQ] with the concurrence of the Governor, shall order persons causing or contributing to the . . . air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes.'' In addition, NCGS 143–215.3(a)(12) provides NC DEQ with the authority to declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. This statute also allows, in the absence of a generalized condition of air pollution, should the Secretary find ''that the emissions from one or more air contaminant sources . . . is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants . . . or to take such other measures as are, in his judgment, necessary.'' EPA has made the preliminary determination that North Carolina satisfies the emergency powers obligations of the annual $PM_{2.5}$ NAAQS.

*9. 110(a)(2)(H) 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. DAQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in North Carolina. NCGS 143–215.107(a)(1) and (a)(10) grant DAQ the authority to prepare and develop, after proper study, a comprehensive plan for the prevention of air pollution and implement the CAA, respectively. These

provisions also provide DAQ the ability and authority to respond to calls for SIP revisions, and North Carolina has provided a number of SIP revisions over the years for implementation of the NAAQS. In addition, State regulation 15A NCAC 2D .2401(d) states that ''The EMC may specify through rulemaking a specific emission limit lower than that established under this rule for a specific source if compliance with the lower emission limit is required to attain or maintain the ambient air quality standard for ozone or $PM_{2.5}$ or any other ambient air quality standard in Section 15A NCAC 2D .0400.'' EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2012 Annual $PM_{2.5}$ NAAQS, when necessary.

*10. 110(a)(2)(J) Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve North Carolina's infrastructure SIP for the 2012 Annual $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility protection. With respect to North Carolina's infrastructure SIP submission related to the *preconstruction PSD permitting,* EPA is not proposing any action in this rulemaking regarding these requirements and instead will act on these portions of the submission in a separate action. EPA's rationale for its proposed action regarding applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility is described below.

*Consultation with government officials (121 consultation):* 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 (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. 15A NCAC 2D .1600 *General Conformity,* 15A NCAC 2D .2000 *Transportation Conformity,* and 15A NCAC 2D .0531 *Sources in Nonattainment Areas,* along with the State's Regional Haze Implementation Plan, provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Specifically, North Carolina adopted state-wide consultation procedures for the implementation of transportation conformity. Implementation of transportation conformity as outlined in the consultation procedures requires DAQ to consult with Federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. The Regional Haze SIP provides for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate that the State meets applicable requirements related to consultation with government officials for the 2012 Annual $PM_{2.5}$ NAAQS when necessary for the consultation with government officials element of section 110(a)(2)(J).

*Public notification (127 public notification):* Rule 15A NCAC 2D .0300 *Air Pollution Emergencies* provides North Carolina with the authority to declare an emergency and notify the public accordingly when it finds a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Additionally, the DAQ has the North Carolina Air Awareness Program which is a program to educate the public on air quality issues and promote voluntary emission reduction measures. The DAQ also features a Web page providing ambient monitoring information regarding current and historical air quality across the State at *http://www.ncair.org/monitor/.* North Carolina participates in the EPA AirNOW program, which enhances public awareness of air quality in North Carolina and throughout the country. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary for the public notification element of section 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. NC DEQ referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). 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 so NC DENR does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that North Carolina's infrastructure SIP submission is approvable for the visibility protection element of section 110(a)(2)(J) related to the 2012 Annual $PM_{2.5}$ NAAQS and that North Carolina does not need to rely on its regional haze program to satisfy this element.

*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. This infrastructure requirement is met through emissions data collected through 15A NCAC 2D .0600 *Monitoring: Recordkeeping: Reporting* (authorized under NCGS 143–215.107(a)(4)), which requires sources to provide information needed to model potential impacts on air quality). NCGS 143–215.107(a) also provides authority for the EMC to determine by means of field sampling and other studies, the degree of air contamination and air pollution in the state. Collectively, these regulations demonstrate that North Carolina has the authority to perform air quality modeling and to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2012 Annual $PM_{2.5}$ NAAQS. The submittal also states that DAQ currently has personnel with training and experience to conduct source-oriented dispersion modeling that would likely be used in $PM_{2.5}$ NAAQS applications with models approved by EPA. Additionally, North Carolina participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2012 Annual $PM_{2.5}$ NAAQS, for the Southeastern states. Taken as a whole, North Carolina's air quality regulations and practices demonstrate that DAQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS has been promulgated, and to provide such information to the EPA Administrator upon request. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along

with analysis of the associated data, related to the 2012 Annual $PM_{2.5}$ NAAQS.

*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.

To satisfy these requirements, North Carolina's infrastructure SIP submission cites Regulation 15A NCAC 2Q .0200 *Permit Fees,* which requires 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 sufficient fee to cover the costs of the permitting program. The 15A NCAC 2D .0500 and 2Q .0500 rules contain the State's title V program [22] which includes provisions to implement and enforce PSD and NNSR permits once these permits have been issued. The fees collected under 15A NCAC 2Q .0200 also support this activity. NCGS 143–215.3, *General powers of Commission and Department; auxiliary Powers,* provides authority for DAQ to require a processing fee in an amount sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. EPA has made the preliminary determination that North Carolina's SIP and practices adequately provide for permitting fees related to the 2012 Annual $PM_{2.5}$ NAAQS, when necessary.

*13. 110(a)(2)(M) Consultation and 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. 15A NCAC 2D .0530 *Prevention of Significant Deterioration* requires that NC DEQ notify the public, including affected local entities, of PSD permit applications and associated information related to PSD permits, and the opportunity for comment prior to making final permitting decisions. NCGS 150B–21.1 and 150B–21.2 authorize and require DAQ to advise, consult, cooperate and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the Department. Also, 15A NCAC 2D .2000 *Transportation Conformity* requires a consultation with all affected partners to be implemented for transportation conformity determinations. Furthermore, DAQ has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP, Regional Haze Implementation Plan, and the 8-Hour Ozone Attainment Demonstration for the North Carolina portion of the Charlotte-Gastonia-Rock Hill NC-SC nonattainment area. EPA has made the preliminary determination that North Carolina's SIP and practices adequately demonstrate consultation with affected local entities related to the 2012 Annual $PM_{2.5}$ NAAQS, when necessary.

## V. Proposed Action

EPA is proposing to approve that portions of DAQ's infrastructure SIP submission, submitted December 4, 2015, for the 2012 Annual $PM_{2.5}$ NAAQS, has met the above described infrastructure SIP requirements. The PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), will not be addressed by EPA at this time. EPA is proposing to approve these portions of North Carolina's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS because these aspects of the submission are 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. *See* 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 rulemaking 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, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 8, 2016.

**Heather McTeer Toney,**

*Regional Administrator, Region 4.*

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