operator obtains permission from the Superintendent, U.S. Naval Academy or their designated representatives. This determination is based on the proposed rule governing the danger zones, including the ability for vessel operators to obtain permission from the Superintendent, U.S. Naval Academy or their designated representatives to transit the danger zones. Unless information is obtained to the contrary during the comment period, the Corps expects that the economic impact of the proposed danger zones would have practically no impact on the public, any anticipated navigational hazard or interference with existing waterway traffic. After considering the economic impacts of this danger zone regulation on small entities, I certify that this proposed rule would not have a significant impact on a substantial number of small entities.

c. *Review under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no significant intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. *Unfunded Mandates Act.* This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a federal private sector mandate and it is not subject to the requirements of either section 202 or section 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

e. *Congressional Review Act.* The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The Corps will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This proposed rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.148 to read as follows:

§ 334.148 Carr Creek and Whitehall Bay, in vicinity of Naval Support Activity Annapolis, U.S. Naval Academy firing range danger zones.

(a) *The areas*—(1) *Danger zone #1.* All navigable waters of Carr Creek, as defined at part 329 of this chapter, north of the line drawn southeasterly from latitude 38°59′3″ N, longitude −76°27′35″ W to latitude 38°58′53″ N longitude –76°27′15″ W across the mouth of Carr Creek.

(2) *Danger zone #2.* Navigable waters of Whitehall Bay, as defined at part 329 of this chapter, within the area bounded by a line connecting the following coordinates: latitude 38°58′53″ N, longitude −76°26′57″ W; thence to latitude 38°58′37″ N, longitude −76°26′10″ W; thence to latitude 38°58′16″ N, longitude −76°26′28″ W; thence to latitude 38°58′45″ N, longitude −76°27′4″ W; and thence along the shoreline to the point of origin.

(3) *Danger zone #3.* Navigable waters of Whitehall Bay, as defined at part 329 of this chapter, within the area bounded by a line connecting the following coordinates: latitude 38°58′28″ N, longitude −76°26′17″ W; thence to latitude 38°58′14″ N, longitude −76°25′53″ W; thence to latitude 38°58′0″ N, longitude −76°26′9″ W; thence to latitude 38°58′16″ N, longitude −76°26′28″ W; thence to the point of origin.

(4) *Datum.* The datum for the coordinates in paragraphs (a)(1) through (3) of this section is North American Datum 1983 (NAD–83).

(b) *The regulations*—(1) *Danger zone #1.* (i) When firing is in progress, all persons, vessels, or other watercraft are prohibited from entering, transiting, drifting, dredging, or anchoring within the danger zone without the permission of the Superintendent, U.S. Naval Academy or their designated representatives.

(ii) When firing is in progress, a flashing red light and warning sign at the boundary of the danger zone will warn persons, vessels, or other watercraft of danger.

(2) *Danger zones #2 and #3.* (i) Prior to and during periods when firing is in progress, shore observers will be on duty, and/or the range will be patrolled by naval surface craft to warn persons, vessels, or other watercraft likely to be endangered. All persons, vessels, or other watercraft so warned shall vacate the applicable danger zone and are prohibited from entering, transiting, drifting, mooring, anchoring, and/or conducting any activity within that danger zone until the conclusion of firing practice without the permission of the Superintendent, U.S. Naval Academy or their designated representatives.

(ii) No firing will occur during hours of darkness or low visibility that would impede viewing of persons, vessels, or other watercraft by shore observers.

(iii) The Superintendent, U.S. Naval Academy is responsible for furnishing in advance the firing schedule for danger zones 2 and 3 to Commander, Fifth Coast Guard District, for publication in a Local Notice to Mariners.

(c) *Enforcement.* The regulations in this section shall be enforced by the Superintendent, U.S. Naval Academy, Annapolis, Maryland and such agencies as they may designate.

Thomas P. Smith,

Chief, Operations and Regulatory Division.

[FR Doc. 2022–26367 Filed 12–2–22; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0326; FRL–9693–01–R9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; 2015 Ozone Infrastructure Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove the Arizona state implementation plan (SIP) as meeting the requirements of sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA) for the implementation, maintenance, and enforcement of the 2015 ozone national ambient air quality standards (NAAQS or ''standards'').

Section 110(a)(1) requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, and that the EPA act on such SIPs. We refer to such SIPs as ''infrastructure'' SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS including, but not limited to, legal authority, regulatory structure, resources, permit programs, monitoring, and modeling necessary to assure attainment and maintenance of the standards. In addition to our proposed partial approval and partial disapproval of Arizona's infrastructure SIP, the EPA is proposing to approve rules in the Arizona Revised Statutes and Pima County Code related to public availability of emissions reports into the Arizona SIP. Lastly, the EPA is proposing to reclassify regions in Arizona with respect to episode plans for ozone under 40 CFR 51.150. The EPA is seeking public comments on this proposed action and will accept comments from the public on this proposal for the next 30 days.

DATES: Any comments must arrive by January 4, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0326 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ben Leers, Air Planning Office (AIR–2), EPA Region IX, (415) 947–4279, *Leers.Ben@epa.gov.*

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

Table of Contents

I. The EPA's Approach To Reviewing Infrastructure SIPs

The EPA is acting on SIP submittals from Arizona that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) with respect to the 2015 ozone NAAQS. Under section 110(a)(1), states are required to submit infrastructure SIPs within three 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). The infrastructure SIP submittals required under section 110(a)(1) are intended to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submittals, and the requirement to make the submittals is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific ''elements'' that each such infrastructure SIP submittal must address.

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

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

The following examples of ambiguities illustrate the need for the EPA to interpret some CAA section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submittals for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submittal must meet the list of requirements therein, while the EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in CAA title I part D, which specifically address nonattainment SIP requirements.[2] Section 110(a)(2)(I) pertains to nonattainment SIP requirements, and part D addresses when attainment plan SIP submittals to address nonattainment area requirements are due. For example, section 172(b) requires the EPA to

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

[2] See, e.g. 70 FR 25162, 25163–25165 (May 12, 2005), explaining the relationship between the timing requirements of CAA section 110(a)(2)(D) versus section 110(a)(2)(I).

establish a schedule for submittal of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[3] This ambiguity illustrates that, rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, the EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submittal. Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submittal and whether the EPA must act upon such SIP submittal in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, the EPA interprets the CAA to allow states to make multiple SIP submittals separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submittals to meet the infrastructure SIP requirements, the EPA can elect to act on such submittals either individually or in a larger combined action.[4] Similarly, the EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submittal for a given NAAQS without concurrent action on the entire submittal. For example, the EPA has sometimes elected to act at different times on various elements and subelements of the same infrastructure SIP submittal.[5]

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

The EPA notes that interpretation of CAA section 110(a)(2) is also necessary when the EPA reviews other types of SIP submittals required under the CAA. Therefore, as with infrastructure SIP submittals, the EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submittals. For example, section 172(c)(7) requires that attainment plan SIP submittals required by part D meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submittals must meet the requirements of section 110(a)(2)(A) regarding enforceable emissions limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submittals required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the air quality prevention of significant deterioration (PSD) program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submittal may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), the EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submittal. In other words, the EPA assumes that Congress could not have intended that each and every SIP submittal, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, the EPA has adopted an approach under which it reviews infrastructure SIP submittals against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, the EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submittals for particular elements.[7] The EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (''2013 Infrastructure SIP Guidance'').[8] The EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, the EPA describes the duty of states to make infrastructure SIP submittals to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. The EPA also made recommendations about many specific subsections of CAA section 110(a)(2) that are relevant in the context of infrastructure SIP submittals.[9] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, the EPA

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

[4] See, *e.g.,* the 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 NSR rule for particulate matter of 2.5 micrometers or less ($PM_{2.5}$) at 78 FR 4339 (January 22, 2013), and the EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS at 78 FR 4337 (January 22, 2013).

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

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

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

[8] Memorandum dated September 13, 2013, from Stephen D. Page, Director, Office of Air Quality and Planning Standards, U.S. EPA, Subject: ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).''

[9] The 2013 Infrastructure SIP Guidance did not make recommendations with respect to infrastructure SIP submittals to address CAA section 110(a)(2)(D)(i)(I). The 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, the 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 the EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submittals need to address certain issues and need not address others. Accordingly, the EPA reviews each infrastructure SIP submittal for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

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

As another example, the EPA's review of infrastructure SIP submittals with respect to the PSD program requirements in CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) focuses on the structural PSD program requirements contained in CAA title I part C and the EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and regulated NSR pollutants, including greenhouse gases (GHG). By contrast, structural PSD program requirements do not include provisions that are not required under the 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 NAAQS for particulate matter of 2.5 micrometers or less ($PM_{2.5}$). Accordingly, the latter optional provisions are types of provisions the EPA considers irrelevant in the context of an infrastructure SIP action.

For other CAA section 110(a)(2) elements, however, the EPA's review of a state's infrastructure SIP submittal focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, inter alia, the requirement that states have a program to regulate new minor sources. Thus, the EPA evaluates whether the state has a SIP-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submittal, however, the 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 the EPA's regulations that pertain to such programs.

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submittal is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and EPA policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of the EPA's ''Final NSR Improvement Rule.'' [10] Thus, the EPA believes it may approve an infrastructure SIP submittal without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submittal even if it is aware of such existing provisions.[11] It is important to note that the EPA's approval of a state's infrastructure SIP submittal should not be construed as explicit or implicit reapproval of any existing potentially deficient provisions that relate to the three specific issues just described.

The EPA's approach to reviewing infrastructure SIP submittals is to identify the CAA requirements that are logically applicable to that submittal. The EPA believes that this approach to the review of a particular infrastructure SIP submittal is appropriate because it would not be reasonable to read the general requirements of CAA 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 the EPA evaluates adequacy of the infrastructure SIP submittal. The EPA believes that a better approach is for states and the EPA to focus attention on those elements of section 110(a)(2) most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

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

Finally, the EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of CAA 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 the EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes the 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

[10] See 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007).

[11] By contrast, the EPA notes that if a state were to include a new provision in an infrastructure SIP submittal that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then the 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.

comply with the CAA.[12] Section 110(k)(6) authorizes the EPA to correct errors in past actions, such as past approvals of SIP submittals.[13] Significantly, the EPA's determination that an action on a state's infrastructure SIP submittal is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude the EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submittal, the EPA believes that section 110(a)(2)(A) may be among the statutory bases that the EPA relies upon in the course of addressing such deficiency in a subsequent action.[14]

II. Background

A. Statutory Framework

As described in the previous section, CAA section 110(a)(1) requires states to make a SIP submittal within three years after the promulgation of a new or revised primary NAAQS. Section 110(a)(2) includes a list of specific elements that each infrastructure SIP submittal must include. These infrastructure SIP elements required by section 110(a)(2) are as follows:

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

Two elements identified in CAA section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are section 110(a)(2)(C), to the extent that it refers to permit programs required under part D (nonattainment NSR), and section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure requirements for the nonattainment NSR portion of section 110(a)(2)(C) or the entirety of section 110(a)(2)(I). Additionally, this action does not address the interstate transport requirements under section 110(a)(2)(D)(i)(I), referred to as ''prongs 1 and 2'' of section 110(a)(2)(D)(i), or the requirements of section 110(a)(2)(D)(i)(II) pertaining to interference with visibility protection in other states, referred to as ''prong 4'' of section 110(a)(2)(D)(i). The EPA proposed action on Arizona's SIP with respect to prongs 1 and 2 of section 110(a)(2)(D)(i) for the 2015 ozone NAAQS in a prior rulemaking,[15] and the EPA will take action on Arizona's SIP with respect to prong 4 of section 110(a)(2)(D)(i) in a separate, future rulemaking.

B. Regulatory Background

In 2015, the EPA promulgated revised NAAQS for 8-hour ozone, triggering a requirement for states to submit infrastructure SIPs. The 2015 ozone NAAQS revised the 2008 8-hour ozone NAAQS by lowering the primary and secondary 8-hour ozone standards from 75 parts per billion (ppb) to 70 ppb.

III. State Submittals

The Arizona Department of Environmental Quality (ADEQ) submitted two SIP revisions to address the infrastructure SIP requirements in CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS. On September 24, 2018, ADEQ submitted the ''Arizona State Implementation Plan Revision under Clean Air Act Sections 110(a)(1) and 110(a)(2) for the 2015 Ozone National Ambient Air Quality Standards'' (''2018 Ozone I–SIP submittal'').[16] On February 10, 2022, ADEQ submitted the ''State Implementation Plan Revision: Clean Air Act Section 110(a)(2) for the 2012 Fine Particulate & 2015 Ozone NAAQS'' (''2022 I–SIP supplement'').[17] The 2018 Ozone I–SIP submittal and the portion of the 2022 I–SIP supplement addressing the 2015 Ozone NAAQS collectively address the infrastructure SIP requirements for the 2015 ozone NAAQS as described by this proposed rule. We refer to them collectively herein as ''Arizona's Ozone I–SIP submittals.''

We find that Arizona's Ozone I–SIP submittals meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102. We also find that they meet the applicable completeness criteria in Appendix V to 40 CFR part 51. We are proposing to act on these submittals with respect to the 2015 ozone NAAQS except for those portions of the 2018 Ozone I–SIP Submittal addressing prongs 1, 2, and 4 of the interstate transport requirements under CAA section 110(a)(2)(D)(i). We are not taking action on the portions of the 2022 I–SIP supplement addressing the 2012 $PM_{2.5}$ NAAQS in this rulemaking.

IV. The EPA's Evaluation and Proposed Action

We have evaluated Arizona's Ozone I–SIP submittals and the existing provisions of the Arizona SIP for compliance with the infrastructure SIP requirements of CAA section 110(a)(2)

[12] For example, the EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See 76 FR 21639 (April 18, 2011).

[13] The EPA has used this authority to correct errors in past actions on SIP submittals related to PSD programs. See Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule, 75 FR 82536 (December 30, 2010). The 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).

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

[15] 87 FR 37776 (June 24, 2022).

[16] Letter dated September 24, 2018, from Timothy S. Franquist, Director, Air Quality Division, ADEQ, to Michael Stoker, Regional Administrator, EPA Region IX, Subject: ''Submittal of the Arizona State Implementation Plan Revision under Clean Air Act Sections 110(a)(1) and 110(a)(2) for the 2015 Ozone NAAQS.''

[17] Letter dated February 10, 2022, from Daniel Czecholinski, Director, Air Quality Division, ADEQ, to Martha Guzman, Regional Administrator, EPA Region IX, Subject: ''Submittal of the Arizona State Implementation Plan Revision under Clean Air Act Sections 110(a)(2) for the 2012 Fine Particulate and the 2015 Ozone NAAQS.''

and the applicable regulations in 40 CFR part 51 (''Requirements for Preparation, Adoption, and Submittal of State Implementation Plans''). The technical support document (TSD) for this rulemaking is available in the docket and includes our evaluation for these infrastructure SIP elements as well as our evaluation of various statutory and regulatory provisions identified and submitted by Arizona.

A. Proposed Approvals and Partial Approvals

Based on the evaluation presented in this notice and in the accompanying TSD, the EPA proposes to approve Arizona's Ozone I–SIP submittals with respect to the 2015 ozone NAAQS for the following CAA requirements. Proposed partial approvals are indicated by the parenthetical ''(in part).''

- 110(a)(2)(A)—Emission limits and other control measures.
- 110(a)(2)(B)—Ambient air quality monitoring/data system.
- 110(a)(2)(C)—Program for enforcement of control measures and regulation of new stationary sources (in part).
- 110(a)(2)(D)(i)(II)—Interference with maintenance, or ''prong 3'' (in part).
- 110(a)(2)(D)(ii)—Interstate pollution abatement, CAA section 126 (in part).
- 110(a)(2)(D)(ii)—International pollution abatement, CAA section 115.
- 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 episodes.
- 110(a)(2)(H)—Consultation with government officials.
- 110(a)(2)(J)—Consultation with government officials, public notification, PSD, and visibility protection (in part).
- 110(a)(2)(K)—Air quality modeling and submission of modeling data.
- 110(a)(2)(L)—Permitting fees.
- 110(a)(2)(M)—Consultation/participation by affected local entities.

Details about the partial approvals noted in this section are provided in Section IV.B of this notice regarding proposed partial disapprovals. The EPA is taking no action on prongs 1, 2, and 4 of CAA section 110(a)(2)(D)(i) in this rulemaking. In addition to our proposed partial approval and partial disapproval of Arizona's infrastructure SIP, we are proposing to approve Arizona Revised Statute (ARS) 49–432 and Pima County Code (PCC) 17.24.010 for incorporation into the Arizona SIP.

B. Proposed Partial Disapprovals

The EPA proposes to partially disapprove Arizona's Ozone I–SIP submittals with respect to the 2015 ozone NAAQS for the following Clean Air Act requirements.

- 110(a)(2)(C)—Program for enforcement of control measures and regulation of new stationary sources (in part).
- 110(a)(2)(D)(i)(II)—Interference with maintenance, or ''prong 3'' (in part).
- 110(a)(2)(D)(ii)—Interstate pollution abatement, CAA section 126 (in part).
- 110(a)(2)(J)—PSD and visibility protection (in part).

The EPA is proposing to partially disapprove Arizona's Ozone I–SIP submittals with respect to the 2015 ozone NAAQS for these CAA requirements due to deficiencies with PSD permitting of GHG in all permitting jurisdictions in Arizona and with PSD permitting of all NSR-regulated pollutants in Pima County. The EPA's proposed disapprovals apply only to the portions of these requirements that relate to PSD permitting programs in Arizona, and they apply only with respect to PSD permitting of GHG in all areas of Arizona and with respect to PSD permitting of all NSR-regulated pollutants in Pima County.

Arizona's SIP does not fully satisfy the statutory and regulatory requirements for PSD permit programs under CAA title I, part C, and thus Pima County currently implements the federal PSD program in 40 CFR 52.21 for all regulated NSR pollutants, pursuant to a delegation agreement with the EPA, and all Arizona jurisdictions implement the federal PSD program in 40 CFR 52.21, pursuant to delegation agreements with the EPA, for GHG because Arizona is prohibited by state law from regulating emissions of GHG. Although the Arizona SIP remains deficient with respect to PSD permitting for certain pollutants in certain areas of Arizona as described, these deficiencies are adequately addressed in both areas by existing federal implementation plans (FIPs). If finalized, these partial disapprovals of Arizona's SIP would not create any new consequences for Arizona, the relevant county agencies, or the EPA, as Arizona and the county agencies already implement the EPA's federal PSD program at 40 CFR 52.21, pursuant to delegation agreements, for all regulated NSR pollutants. If finalized, these partial disapprovals would also not result in any offset or highway sanctions, because sanctions are not triggered by disapprovals of infrastructure SIPs submittals.

C. Incorporation of Rules Into Arizona's State Implementation Plan

Under CAA section 110(a)(2)(F), SIPs must require the installation and maintenance of emissions monitoring by stationary sources, periodic emissions reports from such sources, and correlation of such reports with applicable emissions limitations or standards established under the CAA. The stationary source emissions reports required pursuant to section 110(a)(2)(F) must be made available at reasonable times for public inspection.

The 2022 I–SIP supplement includes the submittal of the following two rules for incorporation into the Arizona SIP to meet the requirements of CAA section 110(a)(2)(F) for the 2015 ozone NAAQS: Arizona Revised Statute (ARS) 49–432 and Pima County Code (PCC) 17.24.010. Specifically, ARS 49–432 and PCC 17.24.010 address the provisions of section 110(a)(2)(F) requiring the public availability of stationary source emissions reports. ARS 49–432 requires that ADEQ make available to the public any records, reports, or information obtained pursuant to ARS Title 49, Chapter 3, ''AIR QUALITY.'' Similarly, PCC 17.24.010 requires that the Pima County Department of Environmental Quality make available to the public any records, reports, or information obtained pursuant to PCC Title 17, Chapter 17.24, ''EMISSION SOURCE RECORDKEEPING AND REPORTING.'' ARS 49–432 and PCC 17.24.010 each include exemptions to public availability requirements related to business confidentiality, ongoing criminal investigations, and civil enforcement actions.

We find that ARS 49–432 and PCC 17.24.010 provide for the public availability of stationary source emissions reports consistent with the requirements of CAA section 110(a)(2)(F). We therefore propose to approve ARS 49–432 and PCC 17.24.010 into the Arizona SIP. Arizona's Ozone I–SIP submittals include numerous other state and county provisions and a narrative description of how these provisions satisfy CAA section 110(a)(2)(F). We are proposing to approve Arizona's SIP as meeting the requirements of section 110(a)(2)(F); our evaluation of the provisions cited in the Arizona's Ozone I–SIP submittals against the requirements of section 110(a)(2)(F) is included in the TSD for this proposed rule.

D. Reclassification of Regions for Ozone Episode Plans

The priority thresholds for classification of air quality control

regions are listed at 40 CFR 51.150, and the specific classifications of air quality control regions in Arizona are listed at 40 CFR 52.121. Consistent with the provisions of 40 CFR 51.153, reclassification of an air quality control region must rely on the most recent three years of air quality data. Under 40 CFR 51.151 and 51.152, regions classified Priority I, IA, or II are required to have SIP-approved emergency episode contingency plans, while those classified Priority III are not required to have plans. We interpret 40 CFR 51.153 as establishing the means for states to review air quality data and request a higher or lower classification for any given region and as providing the regulatory basis for the EPA to reclassify such regions, as appropriate, under the authorities of CAA sections 110(a)(2)(G) and 301(a)(1).

The priority classification threshold for ozone under 40 CFR 51.150 is 195 micrograms per cubic meter, equivalent to 0.10 parts per million (ppm), calculated as a one-hour maximum. Regions with one-hour ozone concentrations greater than 0.10 ppm are classified as Priority I for ozone under 40 CFR 51.150. All other regions are classified as Priority III for ozone. Arizona's regional priority classifications for ozone under 40 CFR 51.150 are located at 40 CFR 52.121. Currently, the Maricopa Intrastate air quality control region (AQCR) and the Pima Intrastate AQCR are classified as Priority I for ozone.

Air quality data from 2019–2021 indicate that the maximum one-hour ozone concentrations monitored in two Arizona regions exceed the Priority I threshold for one-hour ozone. The maximum one-hour ozone concentration measured in the Maricopa Intrastate AQCR in this period was 0.14 ppm; the maximum one-hour ozone concentration measured in the Central Arizona Intrastate AQCR in this period was 0.11 ppm. We are proposing to retain the classification of the Maricopa Intrastate AQCR as Priority I and to reclassify the Central Arizona Intrastate AQCR from Priority III to Priority I for ozone.

Air quality data from 2019–2021 also indicate that the maximum one-hour ozone concentration monitored in the Pima Intrastate AQCR does not exceed the Priority I threshold for one-hour ozone. The maximum one-hour ozone concentration monitored in this region from 2019–2021 was 0.09 ppm. We are therefore proposing to reclassify the Pima Intrastate AQCR from Priority I to Priority III for ozone.

If finalized, the reclassification of the Central Arizona Intrastate AQCR from Priority III to Priority I for ozone will not generate new requirements for Arizona to submit an emergency episode contingency plans for this area because the provisions in Arizona's existing emergency episode plan apply uniformly statewide. Thus, our proposed reclassification of the Central Arizona Intrastate AQCR for ozone also does not affect our proposed approval of the Arizona SIP with respect CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state plans 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); and
- 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 Clean Air Act.

The State did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 (59 FR 7629, February 16, 1994) of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: November 17, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–26359 Filed 12–2–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0651; FRL–10268–01–R9]

Air Plan Approval; California; Eastern Kern Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Eastern Kern Air Pollution Control District (EKAPCD) portion of the California State Implementation Plan (SIP). In this action, we are proposing to approve a local rule submitted by the EKAPCD, governing the issuance of permits for stationary sources, focusing on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or ''the Act''). In the ''Rules and Regulations'' section of this issue of the **Federal Register**, we are approving the submitted rule into