

by the Manager, International Validation Branch, FAA; or EASA; or ATR–GIE Avions de Transport Régional’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email shahram.daneshmandi@faa.gov.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2024–0052, dated February 23, 2024.

(ii) [Reserved]

(4) The following service information was approved for IBR on March 14, 2023 (88 FR 7867, February 7, 2023).

(i) EASA AD 2022–0200, dated September 26, 2022.

(ii) [Reserved]

(5) For EASA AD 2024–0052 and EASA AD 2022–0200, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find these EASA ADs on the EASA website ad.easa.europa.eu.

(6) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(7) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations, or email fr.inspection@nara.gov.

Issued on June 4, 2024.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0539; FRL–11747–01–R9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a revision to the Arizona state implementation plan (SIP) as meeting the requirements of the Clean Air Act (CAA) for the implementation, maintenance, and enforcement of the 2012 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or “standards”). As part of this action, the EPA is proposing to approve regulatory provisions into the Arizona SIP. The EPA is seeking public comment 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 July 15, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0539 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 a disability 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: Michael Dorantes, Geographic Strategies and Modeling Section (AIR–2–2), EPA Region IX, (415) 972–3934, dorantes.michael@epa.gov.

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

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I. The EPA’s Approach To Reviewing Infrastructure SIPs

The EPA has historically referred to 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 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.

Section 110(a)(1) of the Act requires that each State adopt and submit an infrastructure SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, and that the

EPA act on such SIP submittals. 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.

Herein, 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 primary and secondary 2012 PM_{2.5} 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 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.

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)

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.

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 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

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).

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 PM_{2.5} at 78 FR 4339 (January 22, 2013), and the EPA’s final

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, 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 have to 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

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.

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 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 PM_{2.5} NAAQS. 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 minor new 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

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.

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 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

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

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 requirements of section 110(a)(2)(D)(i)(I) pertaining to contributions to nonattainment or interference with maintenance in other States, referred to as “prongs 1 and 2”

(January 26, 2011) (final disapproval of such provisions).

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.

and 110(a)(2)(D)(i)(II) pertaining to interference with visibility protection in other States, referred to as “prong 4”. The EPA will take action on Arizona’s SIP revision with respect to prongs 1, 2, and 4 of section 110(a)(2)(D)(i) in a separate, future rulemaking.

B. Regulatory Background

In January 2013, the EPA promulgated a revised primary NAAQS for annual $PM_{2.5}$, triggering a requirement for States to submit infrastructure SIPs. The EPA strengthened the primary annual $PM_{2.5}$ NAAQS by lowering the level from 15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to $12.0 \mu\text{g}/\text{m}^3$, while maintaining the secondary standard.¹⁵

III. State Submittals

A. Infrastructure SIP Submittal

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 2012 $PM_{2.5}$ NAAQS. On December 11, 2015, ADEQ submitted the “Arizona State Implementation Plan Revision for the 2012 Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standard” (“2015 $PM_{2.5}$ 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 submittals collectively address the infrastructure SIP requirements for the 2012 $PM_{2.5}$ NAAQS as described by this proposed rule. We refer to them collectively herein as “Arizona’s 2012 $PM_{2.5}$ I-SIP submittals.”

We find that Arizona’s 2012 $PM_{2.5}$ I-SIP submittals meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102.¹⁸ 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 2012 $PM_{2.5}$ NAAQS except for those portions of the 2012 $PM_{2.5}$ I-SIP submittals addressing prongs 1, 2, and 4 of the interstate transport requirements under CAA section 110(a)(2)(D)(i). We are also not taking action on the portions of the 2022 I-SIP supplement addressing the 2015 ozone NAAQS in this rulemaking.

B. Revised Rules and Regulations

1. Rules and Regulations Submitted by the State

In a February 10, 2022 letter transmitting the 2022 I-SIP supplement, ADEQ included revised rules and regulations for incorporation by reference into the Arizona SIP. These submittals include: Arizona Administrative Code (AAC) R18–2–220 “Air Pollution Emergency Episodes,” and the “Procedures for the Prevention of Emergency Episodes;” the Arizona Revised Statute (ARS) 49–432(C), dealing with public availability of emissions records, Pinal County Code (PCC) 17.24.010 “Confidentiality of trade secrets, sales data, and proprietary information,” and Maricopa County Air Pollution Control Regulations, “Regulation VI—Emergency Episodes Rule 600,” (“Rule 600”).¹⁹ The EPA has already proposed to approve the revised ARS 49–432 and PCC 17.24.010 for incorporation into the Arizona SIP in a previous proposed rulemaking.²⁰ AAC R18–2–220 and Rule 600 are included as part of the 2022 I-SIP supplement to satisfy the requirements of CAA section 110(a)(2)(G) for 2012 $PM_{2.5}$ NAAQS emergency episodes.

2. What is the Purpose of the Submitted Rule Revisions

The revised AAC R18–2–220 is intended to satisfy outstanding CAA section 110(a)(2)(G) requirements by adding details of averaging time with alert, warning, emergency, and significant harm levels for $PM_{2.5}$. Specifically, the averaging time is set to 24 hours, the alert level is set to $140.5 \mu\text{g}/\text{m}^3$, the warning level is set to $210.5 \mu\text{g}/\text{m}^3$, the emergency level is set to

$280.5 \mu\text{g}/\text{m}^3$, and the significant harm level is set to $350.5 \mu\text{g}/\text{m}^3$. These action levels are set in accordance with the recommendations in EPA’s 2009 guidance on $PM_{2.5}$ infrastructure SIPs (“2009 $PM_{2.5}$ I-SIP Guidance”).²¹ Furthermore, the ADEQ “Procedures for Prevention of Emergency Episodes” incorporated by reference along with AAC R18–2–220 contains the specific actions and processes that the State must follow in the event of an air pollution event reaching the various thresholds. Additionally, Maricopa County Air Quality Department (MCAQD) amended Rule 600 to align the rule with the episode level criteria and significant harm levels listed in AAC R18–2–220 and the 2009 $PM_{2.5}$ I-SIP Guidance.

280.5 $\mu\text{g}/\text{m}^3$, and the significant harm level is set to $350.5 \mu\text{g}/\text{m}^3$. These action levels are set in accordance with the recommendations in EPA’s 2009 guidance on $PM_{2.5}$ infrastructure SIPs (“2009 $PM_{2.5}$ I-SIP Guidance”).²¹ Furthermore, the ADEQ “Procedures for Prevention of Emergency Episodes” incorporated by reference along with AAC R18–2–220 contains the specific actions and processes that the State must follow in the event of an air pollution event reaching the various thresholds. Additionally, Maricopa County Air Quality Department (MCAQD) amended Rule 600 to align the rule with the episode level criteria and significant harm levels listed in AAC R18–2–220 and the 2009 $PM_{2.5}$ I-SIP Guidance.

IV. The EPA’s Evaluation and Proposed Action

We have evaluated Arizona’s 2012 $PM_{2.5}$ I-SIP submittals, the associated revised rules and regulations, and the existing provisions of the Arizona SIP for compliance with the infrastructure SIP requirements of CAA section 110(a)(2) 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 detailed evaluation for these infrastructure SIP elements, rationale for our proposed actions, and 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 2012 $PM_{2.5}$ I-SIP submittals with respect to the 2012 $PM_{2.5}$ 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 PSD, or “prong 3” (in part).
- 110(a)(2)(D)(ii)—Interstate pollution abatement, CAA section 126 (in part).

¹⁵ 78 FR 3086, (January 15, 2013).

¹⁶ Letter dated December 11, 2015, from Eric Massey, Director, Air Quality Division, ADEQ, to Jared Blumenfeld, Regional Administrator, EPA Region IX, Subject: “Arizona Infrastructure State Implementation Plan for the 2012 $PM_{2.5}$ National Ambient Air Quality Standards.”

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.”

¹⁸ For the 2015 $PM_{2.5}$ I-SIP submittal, ADEQ provided a 30-day public comment period that started on November 9, 2015 and concluded on December 9, 2015, with a public hearing occurring on the same date. No comments were expressed during the 30-day comment period nor at the public hearing. The details of this public comment period and hearing can be found in Appendix B of the

¹⁹ These submitted revised rules and regulations are included in Appendices C and D the 2022 I-SIP supplement.

²⁰ 87 FR 74349, December 5, 2022.

²¹ “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),” September 25, 2009.

- 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.

B. Proposed Partial Disapprovals

The EPA proposes to partially disapprove Arizona's 2012 PM_{2.5} I-SIP submittals with respect to the 2012 PM_{2.5} 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 PSD, or “prong 3” (in part).
- 110(a)(2)(D)(ii)—Interstate pollution abatement, CAA section 126 (in part).
- 110(a)(2)(J)—Consultation with government officials, public notification, PSD and visibility protection (in part).

The EPA is proposing to partially disapprove Arizona's 2012 PM_{2.5} I-SIP submittals with respect to the 2012 PM_{2.5} NAAQS for these CAA requirements due to deficiencies with respect to PSD permitting of GHG in all permitting jurisdictions in Arizona and with respect to 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 of GHG in all areas of Arizona and with respect to PSD permitting of all 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. 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 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. These partial disapprovals, if finalized, would also not result in any offset or highway sanctions, which are not triggered by disapprovals of infrastructure SIPs under CAA section 110(a)(2).

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

As part of our proposed approval of the Arizona infrastructure SIP submittal elements listed in Section IV.A, we are also proposing to approve two rules and one plan included with the 2022 I-SIP supplement for incorporation into the Arizona State SIP: the revised AAC R18–2–220 “Air Pollution Emergency Episodes,” submitted December 17, 2021, and the “Procedures for the Prevention of Emergency Episodes” submitted February 10, 2022, with the 2022 I-SIP supplement.²² Similarly, we are proposing approval of the revised Maricopa County Air Pollution Control Regulation VI, “Emergency Episodes: Rule 600 Emergency Episodes,” submitted on December 17, 2021, for incorporation into the State SIP.

As a general matter, rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). We have evaluated the ADEQ and MCAQD revised rules for compliance with CAA requirements for SIPs set forth in CAA section 110(a)(2) and for compliance with CAA requirements for SIP revisions in CAA sections 110(l) and

193. In general, the rules strengthen the SIP for the reasons discussed in Section III.B.2 of this document and in our TSD. Based upon our analysis, we propose to find that AAC R18–2–220 “Air Pollution Emergency Episodes,” the “Procedures for the Prevention of Emergency Episodes,” and Maricopa County Rule 600 meet the requirements of CAA sections 110(a)(2), 110(l), and 193. Therefore, the EPA is proposing to approve the submitted revisions to AAC R18–2–220 “Air Pollution Emergency Episodes,” the “Procedures for the Prevention of Emergency Episodes,” and Maricopa County Rule 600 into the Arizona SIP.

D. Deferred Action

The EPA will address the following Clean Air Act Requirements in separate rulemakings:

- 110(a)(2)(D) (in part): Interstate Pollution Transport.
 - 110(a)(2)(D)(i)(I)—significant contribution to a nonattainment area (prong 1).
 - 110(a)(2)(D)(i)(I)—significant contribution to a maintenance area (prong 2).
 - 110(a)(2)(D)(i)(II)—interference with visibility protection in Class I areas (prong 4).

We note that the EPA intends to act on Prongs 1 and 2 of 110(a)(2)(D)(i)(I) in a separate rulemaking. We intend to act on Prong 4 of 110(a)(2)(D)(i)(II) when we act on Arizona's plan addressing Regional Haze requirements for the second planning period.

E. Revising Air Quality Control Regions and Evaluating Emergency Episode Planning Requirements for PM_{2.5} in Arizona

Section 51.150 provides criteria for the classification of areas for emergency episode planning purposes based on measured concentrations of ambient air pollutants, specifically sulfur oxides, particulate matter, carbon monoxide, nitrogen dioxide, and ozone. The priority thresholds for classification of air quality control regions (AQCR) are listed at 40 CFR 51.150, and the specific classifications of AQCR in Arizona are listed at 40 CFR 52.121. Consistent with the provisions of 40 CFR 51.153, reclassification of an AQCR must rely on the most recent three years of air quality data. Under 40 CFR 51.151 and 51.152, regions classified under the more stringent classifications of 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 also interpret 40 CFR 51.153 as establishing the means for

²² ADEQ's “Procedures for the Prevention of Emergency Episodes” are located in Appendix D to the 2022 I-SIP supplement.

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).

Arizona has six AQCRs: Maricopa Intrastate, which includes Maricopa County; Pima Intrastate, which includes Pima County; Northern Arizona Intrastate, which includes Apache, Coconino, Navajo, and Yavapai Counties; Mohave-Yuma Intrastate, which includes Mohave and Yuma Counties; Central Arizona Intrastate, which includes Gila and Pinal Counties; and Southeast Arizona Intrastate, which includes Cochise, Graham, Greenlee, and Santa Cruz Counties.

La Paz County is not listed within any of Arizona's AQCRs. This county composed the northern portion of Yuma County prior to its establishment in 1983. The constituent counties of Arizona's AQCRs in 40 CFR 52.121 and the delimited boundaries listed in 40 CFR 81.268 predate the incorporation of La Paz County.²³ Since that time, neither 40 CFR 52.121 nor 40 CFR 81.268 have been revised to include this county. Therefore, we propose a revision to 40 CFR 52.121 to add La Paz County to the list of constituent counties for the Mohave-Yuma Intrastate AQCR, and to 40 CFR 81.268, we propose to add La Paz County to the delimited area of the Mohave-Yuma Intrastate AQCR.²⁴

The EPA's emergency episode regulations were promulgated before the agency's regulation of PM_{2.5} as a priority pollutant, and do not include concentrations for the priority classification based on PM_{2.5} concentrations in 40 CFR 51.150. As explained in our TSD, to determine the appropriate priority classifications for Arizona's AQCRs and any related emergency episode planning requirements, we followed the recommended threshold concentrations and corresponding priority classifications set forth in the EPA's 2009 PM_{2.5} I-SIP Guidance. We evaluated the three most recent years of complete, quality-assured, and certified ambient air monitoring data to yield maximum 24-hour PM_{2.5} concentrations for each county;²⁵ the maximum

recorded 24-hour PM_{2.5} concentrations along with our proposed classifications for each AQCR are compiled in Table 16 of the TSD accompanying this proposed rule.

The air quality data from 2020–2022 indicate the maximum 24-hour PM_{2.5} concentrations monitored in the Pima Intrastate, Northern Arizona Intrastate, Mohave-Yuma Intrastate, Central Arizona Intrastate, and Southeast Arizona Interstate AQCRs all fall below the Priority II minimum of 140.5 µg/m³ for PM_{2.5} set forth in the 2009 PM_{2.5} I-SIP Guidance. However, the maximum 24-hour concentration measured in the Maricopa Intrastate was 222.4 µg/m³, exceeding the minimum Priority I threshold of 210.5 µg/m³. Therefore, the Maricopa Intrastate AQCR is required to have an emergency episode plan for PM_{2.5}. As mentioned in Section IV.C of this notice, ADEQ and Maricopa County have both submitted emergency episode plans, and we propose to find that these plans satisfy the requirements of 40 CFR 51.152(a)–(b) and 110(a)(2)(G) of the CAA.

F. Request for Public Comments

The EPA is soliciting public comments on this proposed rulemaking. We will accept comments from the public for the next 30 days. We will consider any comments received before taking final action.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the ADEQ and MCAQD rules and plan listed and discussed in Section IV.C of this preamble. The EPA has made, and will continue to make, these documents generally available electronically in the docket for this rulemaking at <https://www.regulations.gov>.

VI. 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 review State choices, and approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to partially approve

and partially disapprove a revision to the Arizona SIP as meeting the requirements of sections 110(a)(1) and 110(a)(2) of the Clean Air Act for the implementation, maintenance, and enforcement of the 2012 PM_{2.5} NAAQS 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 14094 (88 FR 21879, 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a State program;
 - 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.
- Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should

²³ 45 FR 7545 (February 4, 1980).

²⁴ The EPA has discussed the basis for these proposed amendments to 40 CFR 52.121 and 40 CFR 81.268 with ADEQ and the State's concurrence with these revisions will be included as a formal request letter in the docket for this rulemaking with our notice of final action.

²⁵ EPA AQS Daily Summary Report, AMP435, for 2020–2022 24-Hour PM_{2.5} Values for Arizona.

Report accessed July 31, 2023, included in the docket for this rulemaking.

bear a disproportionate burden of environmental harms and risks, including those resulting from negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action described in this proposed rulemaking, this action is expected to

have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 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 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, Nitrogen Dioxide, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 6, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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