

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 Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the 1997 8-hour ozone attainment demonstration, contingency measures and MVEBs for the Washington Area submitted by the State of Maryland, the District of Columbia and the Commonwealth of Virginia on June 4, 2007, June 12, 2007 and June 12, 2007 respectively, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the states, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Reporting

and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 13, 2013.

**W. C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2013–06421 Filed 3–19–13; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2012–0582; FRL–9792–6]

#### Approval and Promulgation of Implementation Plans; Tennessee; 110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve, and in the alternative, conditionally approve in part, the State Implementation Plan (SIP) revision, submitted by the State of Tennessee, through the Department of Environment and Conservation, demonstrating that the State meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 2008 Lead national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. Tennessee certified that the Tennessee SIP contains provisions that ensure the 2008 Lead NAAQS is implemented, enforced, and maintained in Tennessee (hereafter referred to as an “infrastructure submission”). EPA is proposing to conditionally approve portions of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) related to prevention of significant deterioration (PSD) requirements, and a portion of section 110(a)(2)(E)(ii) of Tennessee’s October 19, 2009, infrastructure submission. The current Tennessee SIP does not include provisions to comply with these requirements; however, Tennessee has committed to submit SIP revisions to address these deficiencies. EPA is also proposing, in the alternative, to approve the entire Tennessee SIP, including the sections described above, as meeting the applicable infrastructure requirements

for the 2008 Lead NAAQS. Should Tennessee submit, and EPA approve, the necessary provisions to correct the identified infrastructure SIP deficiencies prior to EPA taking final action on the October 19, 2009, infrastructure submission, EPA anticipates finalizing full approval of the infrastructure SIP. If EPA does not approve these necessary provisions prior to taking final action on the October 19, 2009, infrastructure submission, EPA anticipates finalizing conditional approvals for those elements for which the Tennessee infrastructure SIP remains deficient.

**DATES:** Written comments must be received on or before April 19, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0582, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *Email*: R4-RDS@epa.gov.

3. *Fax*: (404) 562–9019.

4. *Mail*: “EPA–R04–OAR–2012–0582,” Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier*: Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA–R04–OAR–2012–0582. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9152. Mr. Farngalo can be reached via electronic mail at [farngalo.zuri@epa.gov](mailto:farngalo.zuri@epa.gov).

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#### I. Background

On October 5, 1978, EPA promulgated primary and secondary NAAQS for Lead under section 109 of the Act. See 43 FR 46246. Both primary and secondary standards were set at a level of 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), measured as Lead in total suspended particulate matter (Pb-TSP), not to be exceeded by the maximum arithmetic mean concentration averaged over a calendar quarter. This standard was based on the "1977 Air Quality Criteria for Lead" guidance document (USEPA, August 7, 1977). On November 12, 2008 (75 FR 81126), EPA issued a final rule to revise the primary and secondary Lead NAAQS. The revised primary and secondary Lead NAAQS were revised to 0.15  $\mu\text{g}/\text{m}^3$ . By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than October 15, 2011, for the 2008 Lead NAAQS. Tennessee submitted its infrastructure SIP for the 2008 Lead NAAQS on October 19, 2009.<sup>1</sup>

Today's action is proposing to approve Tennessee's infrastructure submission for the 2008 Lead NAAQS. In addition, EPA is also proposing, in the alternative, to conditionally approve a subset of the sections required as part of the State's 2008 Lead infrastructure SIP. Specifically, EPA is also proposing, in the alternative, to conditionally approve, Tennessee's infrastructure submission for portions of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) as they relate to a 2010 PSD rulemaking for Particulate Matter Less Than 2.5 Micrometers ( $\text{PM}_{2.5}$ ).<sup>2</sup> In

<sup>1</sup> On June 27, 2012, the Center for Biological Diversity and the Center for Environmental Health sued EPA for allegedly failing to take certain mandatory actions related to the "infrastructure" requirements associated with the 2008 Lead NAAQS. Included with this complaint was EPA's alleged failure to take action on Tennessee's 2008 Lead infrastructure SIP within the applicable statutory timeframe.

<sup>2</sup> See the final rulemaking entitled "Final Rule Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ( $\text{PM}_{2.5}$ )—Increments, Significant Impact Levels (SILs) and Significant monitoring Concentration (SMC): Final Rule" (75 FR 64864).

addition, EPA is also proposing to conditionally approve, in the alternative, the portion of section 110(a)(2)(E)(ii) pertaining to CAA section 128(a)(1) significant portion of income requirements. Today's action is not proposing approval of any specific rule; but rather, proposing that Tennessee's already approved SIP meets—or in the case of the elements proposed for conditional approval, will meet, with changes—certain CAA requirements.

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

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2008 Lead NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1978 Lead NAAQS.

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below<sup>3</sup>

<sup>3</sup> Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements

Continued

and in EPA's October 14, 2011, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)."

- 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, PSD and new source review (NSR).<sup>4</sup>
- 110(a)(2)(D): Interstate and international transport provisions.
- 110(a)(2)(E): Adequate personnel, funding, and authority.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency episodes.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

### III. Scope of Infrastructure SIPs

This rulemaking will not cover four substantive issues that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (SSM), that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion); (iii) existing provisions for minor source NSR programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform).

Instead, EPA has indicated that it has other authority to address any such

existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's June 11, 2012, proposed rule entitled, "Approval and Promulgation of Implementation Plans; Tennessee 110(a)(1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards" in the section entitled, "Scope of Infrastructure SIPs" (See 77 FR 34306). It can also be found in EPA's August 22, 2012, proposed rule entitled, "Approval and Promulgation of Implementation Plans; Tennessee 110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone Matter National Ambient Air Quality Standards" in the section entitled, "Scope of Infrastructure SIPs." See 77 FR 50651.

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

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

1. 110(a)(2)(A): *Emission limits and other control measures*: Several regulations within Tennessee's SIP provide Tennessee Air Pollution Control Regulations relevant to air quality control regulations. The regulations described below have been federally approved in the Tennessee SIP and include enforceable emission limitations and other control measures. Chapters 1200–3–1, *General Provisions*; 1200–3–3, *Air Quality Standards*; 1200–3–22, *Lead Emission Standards*; and 1200–3–8, *Fugitive Dust Control Regulations* of the Tennessee SIP establish emission limits for lead and address the required control measures, means, and techniques for compliance with the 2008 Lead NAAQS. EPA has made the preliminary determination that the provisions contained in these chapters and Tennessee's practices are adequate to protect the 2008 Lead NAAQS in the State.

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

regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

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

2. 110(a)(2)(B) *Ambient air quality monitoring/data system*: Tennessee's Air Pollution Control Requirements, Chapter 1200–3–12, *Procedures for Ambient Sampling and Analysis*, of the Tennessee SIP, along with the Tennessee Network Description and Ambient Air Monitoring Network Plan, provide for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies. On July 9, 2012, Tennessee submitted its plan to EPA. On September 21, 2012, EPA approved Tennessee's monitoring network plan. Tennessee's approved monitoring network plan can be accessed at [www.regulations.gov](http://www.regulations.gov) using Docket ID No. EPA–R04–OAR–2012–0582. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2008 Lead NAAQS.

3. 110(a)(2)(C) *Program for enforcement of control measures including review of proposed new sources*. In this action, EPA is proposing to approve, and in the alternative, conditionally approve in part, Tennessee's infrastructure SIP for the 2008 Lead NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Chapter 1200–3–9, *Construction and Operating Permits*, of Tennessee's SIP pertains to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable. Chapter 1200–3–22, *Lead Emission Standards*, of Tennessee's SIP, published on August 12, 1985, specifies requirements for

of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

<sup>4</sup> This rulemaking only addresses requirements for this element as they relate to attainment areas.

Reasonably Available Control Technology for significant existing sources of Lead (October 29, 2001, 66 FR 44632).

In addition to these requirements, there are four other revisions to the Tennessee SIP that are necessary to meet the requirements of infrastructure element 110(a)(2)(C). These four revisions are related to 1) the Ozone Implementation NSR Update (November 29, 2005, 70 FR 71612); 2) the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (June 3, 2010, 75 FR 31514); 3) the NSR PM<sub>2.5</sub> Rule (May 16, 2008, 73 FR 28321);<sup>5</sup> and 4) the final rulemaking entitled "Final Rule Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant monitoring Concentration (SMC); Final Rule" hereafter referred to as "PM<sub>2.5</sub> PSD Increment-SILs-SMC Rule" (75 FR 64864).

The first necessary revision to the Tennessee SIP (Ozone Implementation NSR Update revision) was submitted by TDEC on May 28, 2009. This revision

modified provisions of the State's implementation plan at Chapter 1200–3–9, *Construction and Operating Permits*, in order to meet the applicable requirements of the Ozone Implementation NSR Update. EPA approved this revision on February 7, 2012. See 77 FR 6016.

The second necessary revision pertains to changes in the PSD program that were promulgated in the Greenhouse Gas (GHG) Tailoring Rule. TDEC submitted a revision to EPA on January 11, 2012, to address these changes. The revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Tennessee's PSD permitting requirements for their GHG emissions, and thereby addresses the thresholds for GHG permitting applicability in Tennessee. EPA approved this revision on February 28, 2012. See 77 FR 11744.

The third necessary revision pertains to the adoption of PSD and Nonattainment New Source Review (NNSR) requirements related to the implementation of the NSR PM<sub>2.5</sub> Rule. On July 29, 2011, TDEC submitted revisions to its PSD/NSR regulations for EPA approval to revise the Tennessee SIP in Chapter 1200–03–09–.01, *Construction Permits*. This revision addresses the required federal PSD and NNSR permitting provisions governing the implementation of the NSR program for PM<sub>2.5</sub> as promulgated in the NSR PM<sub>2.5</sub> Rule. See 73 FR 28321 (May 16, 2008). EPA finalized approval of Tennessee's July 29, 2011, submittal on July 30, 2012. See 77 FR 44481.

The fourth necessary revision pertains to the increments portion of the PM<sub>2.5</sub> PSD Increment-SILs-SMC Rule. This rule requires states to regulate the construction and modification of any major stationary source locating in an attainment or unclassifiable area, where the source's emissions may cause or contribute to a violation of the NAAQS. Currently, Tennessee's SIP does not contain provisions to address this requirement. On October 4, 2012, Tennessee submitted a letter to EPA with a schedule and commitment to approve the necessary specific enforceable SIP revision to address its SIP deficiencies related to the October 20, 2010, PSD PM<sub>2.5</sub> Increments, SILs and SMC Rule increments requirements. The Tennessee letter, which commits the State to submitting this revision to EPA within one year, can be accessed at [www.regulations.gov](http://www.regulations.gov) using Docket ID No. EPA–R04–OAR–2012–0582. Based on Tennessee's commitment, EPA is proposing to conditionally approve the

portion of section 110(a)(2)(C) related to the increments requirements of the PM<sub>2.5</sub> Increments, SILs and SMC Rule consistent with section 110(k)(4) of the Act. Failure by Tennessee to provide this revision by March 6, 2014 would automatically result in the conditional approval converting to a disapproval. Should that occur, EPA would provide the public with notice of such a disapproval in the **Federal Register**.

As described above, EPA is also proposing, in the alternative, to approve section 110(a)(2)(C) related to the increments requirements of the PM<sub>2.5</sub> Increments, SILs and SMC Rule. In this action, EPA is proposing to approve in part, and in the alternative conditionally approve in part, Tennessee's infrastructure SIP for the 2008 lead NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Minor sources are subject to the statutory requirements in section 110(a)(2)(C) of the CAA which requires " \* \* \* regulations of the modification and construction of any stationary source \* \* \* as necessary to assure that the NAAQS are achieved." These programs should be established in each state within 3 years of the promulgation of a new revised NAAQS, and may be particularly important because virtually all sources of lead are minor sources. EPA has made the preliminary determination that Tennessee's SIP (with the exception of the requirements related to PM<sub>2.5</sub> increments) and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 2008 lead NAAQS.

Should Tennessee submit its revision to address the applicable portions of this Rule before EPA finalizes a conditional approval this portion of section 110(a)(2)(C), EPA intends to finalize full approval for this section.<sup>6</sup> In the event, EPA does not approve the increments portion of Tennessee PSD PM<sub>2.5</sub> Increments, SILs and SMC Rule revision into the SIP prior to final action on the State's infrastructure SIP, EPA intends to finalize a conditional approve of this section 110(a)(2)(C) requirements.

Collectively, the above-described SIP revisions address requisite requirements of infrastructure element 110(a)(2)(C)

<sup>5</sup> On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council v. EPA*, No. 08–1250, 2013 WL 45653 (D.C. Cir., filed July 15, 2008) (consolidated with 09–1102, 11–1430), issued a judgment that remanded EPA's 2007 and 2008 rules implementing the 1997 PM<sub>2.5</sub> NAAQS. The court ordered EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at \* 8. Subpart 4 of Part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 implementation rule addressed by the court decision, "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)," 73 FR 28321 (May 16, 2008), promulgated NSR requirements for implementation of PM<sub>2.5</sub> in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 rule in order to comply with the court's decision. Accordingly, EPA's approval in part and conditional approval in part of Tennessee's infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due 3 years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

<sup>6</sup> Full approval of this section would require EPA to take final action approving the increment portions of Tennessee's PSD PM<sub>2.5</sub> Increments, SILs and SMC Rule revision prior to, or concurrently with, final action to approve section 110(a)(2)(C).

and are necessary for today's rulemaking to propose approval of infrastructure SIP element 110(a)(2)(C). EPA also notes that today's action is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

4. 110(a)(2)(D)(i) and (ii) *Interstate and International transport provisions*: EPA is proposing to approve, and in the alternative conditionally approve in part, Tennessee's infrastructure SIP for the 2008 lead NAAQS with respect to section 110(a)(2)(D)(i) to include a program in the SIP that regulates the modification and construction of any stationary source subject to PSD as necessary to assure that the NAAQS are achieved. Specifically, as mentioned above, in this action, EPA is proposing to approve in part and in the alternative, conditionally approve in part Tennessee's infrastructure SIP for the 2008 Lead NAAQS related to the PM<sub>2.5</sub> PSD increments and with respect to the general requirement in section 110(a)(2)(D)(i) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Minor sources are subject to the statutory requirements in section 110(a)(2)(C) of the CAA which requires " \* \* \* regulations of the modification and construction of any stationary source \* \* \* as necessary to assure that the NAAQS are achieved." These programs should be established in each state within 3 years of the promulgation of a new revised NAAQS, and may be particularly important because virtually all sources of lead are minor sources.

Chapter 1200-9-.01(5) *Growth Policy*; 1200-3-9-.01(4) *Prevention of Significant Deterioration of Air Quality*; and Chapter 1200-3-22 *Lead Emission* of the Tennessee SIP outline how the

State will notify neighboring states of potential impacts from new or modified sources. Section 110(a)(2)(D)(i) provides for infrastructure SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. The preceding requirements, from subsection 110(a)(2)(D)(i)(I), respectively refer to what may be called prongs 1 and 2. The physical properties of lead prevent lead emission from experiencing that same travel or formation phenomena as PM<sub>2.5</sub> and ozone for interstate transport as outlined in prongs 1 and 2. More specifically, there is a sharp decrease in the lead concentrations, at least in the coarse fraction, as the distance from a lead source increases. EPA believes that the requirements of prongs 1 and 2 can be satisfied through a state's assessment as to whether a lead source located within its State in close proximity to a state border has emissions that contribute significantly to the nonattainment or interfere with maintenance of the NAAQS in the neighboring state.<sup>7</sup> Tennessee has two lead sources that have emissions of lead over 0.5 tons per year (tpy). Both sources are located well beyond 2 miles from the State border.<sup>8</sup> Therefore, EPA has made the preliminary determination that Tennessee's SIP meets the requirements of section 110(a)(2)(D)(i)(I).

Section 110(a)(2)(D)(i)(II), as it relates to PSD requirements, (referred to as prong 3) may be met by the State's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to PSD and (if the state contains a nonattainment area for the relevant pollutant) NNSR programs that implement the 2008 Lead NAAQS.

As discussed above in the discussion for the PSD requirements of section 110(a)(2)(C), Tennessee's SIP currently contains three of the four necessary provisions for the State's PSD program.<sup>9</sup>

<sup>7</sup> For example EPA's experience with the initial lead designations suggest that sources that emit less than 0.5 tpy or that are located more than two miles from the state border generally appear unlikely to contribute significantly to the nonattainment in another state.

<sup>8</sup> The first facility, Exide Technologies, is located at 364 Exide Drive in Bristol Tennessee, which is approximately 5 miles from the nearest border. The second facility is Gerdau Ameristeel, located at 4615 Coster Road NE in Knoxville, Tennessee, which is approximately 100 miles from the nearest border.

<sup>9</sup> (1) EPA's approval of Tennessee's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements, (2) EPA's approval of Tennessee's PSD GHG Tailoring Rule revisions which addresses the thresholds for

On October 4, 2012, Tennessee submitted a letter to EPA with a schedule and commitment to provide the necessary SIP revision to address its SIP deficiencies related to the October 20, 2010, PSD PM<sub>2.5</sub> Increments, SILs, and SMC Rule requirements. Based on Tennessee's commitment, EPA is proposing to conditionally approve the portion section 110(a)(2)(D)(i)(II), related to the increments requirements of the PM<sub>2.5</sub> Increments, SILs and SMC Rule consistent with section 110(k)(4) of the Act. EPA's proposed conditional of prong 3, if finalized, would obligate Tennessee to provide the SIP revision to address the increment portion of the PSD PM<sub>2.5</sub> Increments, SILs and SMC Rule by March 6, 2014. Failure by Tennessee to provide this revision by that date would automatically result in such a conditional approval converting to a disapproval. Should that occur, EPA would provide the public with notice of such a disapproval in the **Federal Register**.

EPA is also today proposing full approval of prong 3. In the event that Tennessee submits a revision to address increments portion of the PSD PM<sub>2.5</sub> Increments, SILs and SMC Rule, and EPA approves that submission prior to finalizing this infrastructure SIP action, EPA believes Tennessee's 2008 Lead infrastructure SIP for prong 3 of section 110(a)(2)(D)(i) will then be fully approvable.

With regard to section 110(a)(2)(D)(i)(II), the visibility sub-element, referred to as prong 4, significant impacts from lead emissions from stationary sources are expected to be limited to short distances from the source. Lead stationary sources in Tennessee are located at distances from Class I areas such that visibility impacts are negligible. Where a state's regional haze SIP has been approved as meeting all current obligations, EPA has determined that such an approved plan demonstrates compliance with the prong 4 requirements. EPA completed a limited approval and limited disapproval of Tennessee's regional haze SIP,<sup>10</sup> with the exception of the

GHG permitting applicability in Tennessee, and (3) EPA's approval of Tennessee's NSR PM<sub>2.5</sub> Rule, which adopts required federal PSD and NNSR permitting provisions governing the implementation of the NSR program for PM<sub>2.5</sub> as promulgated in the NSR PM<sub>2.5</sub> Rule.

For additional detailed information on these requirements, see section 3 above.

<sup>10</sup> Refer to EPA's proposed rulemaking entitled "Approval and Promulgation of Implementation Plans: Region 4 States; 110(a)(2)(D)(i)(II) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards," for more detailed information in support of EPA's proposed approval of

best available retrofit technology (BART) for the Eastman Chemical Company portion, on April 24, 2012. See 77 FR 24392. On November 27, 2012, EPA approved the Eastman Chemical Company BART portion of Tennessee's regional haze submittal. See 77 FR 70689.

With regard to the requirements of section 110(a)(2)(D)(ii), Tennessee does not have any pending obligation under sections 115 and 126 of the CAA. With the exception of section 110(a)(2)(D)(i)(II), related to PSD, EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2008 lead NAAQS. For the reasons described above, EPA is proposing full approval of section 110(a)(2)(D), and in the alternative, conditional approval of section 110(a)(2)(D)(i) prong 3 related to the increment requirements of the PSD PM<sub>2.5</sub> Increments, SILs and SMC Rule.

5. 110(a)(2)(E) *Adequate resources*: Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Tennessee's SIP as meeting the requirements of sections 110(a)(2)(E)(i) and (iii). With respect to section 110(a)(2)(E)(ii) (regarding state boards), EPA is proposing to approve, and in the alternative conditionally approve in part, this sub-element. EPA's rationale for today's proposals respecting each section of 110(a)(2)(E) is described in turn below.

With respect to sections 110(a)(2)(E)(i) and (iii), TDEC, through the Tennessee Air Pollution Control Board, is responsible for promulgating rules and regulations for the NAAQS, emissions standards general policies, a system of permits, fee schedules for the review of plans, and other planning needs. As evidence of the adequacy of TDEC's resources regarding sections 110(a)(2)(E)(i) and (iii), EPA submitted a

letter to Tennessee on April 24, 2012, outlining 105 grant commitments and current status of these commitments for fiscal year 2011. The letter EPA submitted to Tennessee can be accessed at [www.regulations.gov](http://www.regulations.gov) using Docket ID No. EPA-R04-OAR-2012-0582.

Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2011, therefore, Tennessee's grants were finalized and closed out. EPA has made the preliminary determination that Tennessee has adequate resources for implementation of the 2008 Lead NAAQS.

With respect to section 110(a)(2)(E)(ii), EPA is proposing to approve, and in the alternative, to conditionally approve in part Tennessee's infrastructure SIP as to this requirement. Section 110(a)(2)(E)(ii) provides that infrastructure SIPs must require compliance with section 128 of CAA requirements respecting State boards. Section 128, in turn, provides at subsection (a)(1) that each SIP shall require that any board or body which approves permits or enforcement orders shall be subject to the described public interest and income restrictions therein. Subsection 128(a)(2) requires that any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements.

EPA believes the Tennessee SIP currently meets the requirements of section 110(a)(2)(E)(ii) with respect to section 128(a)(2) obligations, but does not meet the section 128(a)(1) obligations. To address section 128(a)(2) requirements, the provisions of Tennessee Rule Chapter 1200-3-17 have been incorporated into the Tennessee SIP. See 67 FR 55322. Regarding section 128(a)(1) requirements, Tennessee previously committed to adopt specific enforceable measures into its SIP within one year to address the applicable portions of section 128(a)(1) for the infrastructure SIP of another NAAQS. Tennessee's section 128(a)(1) commitment letter to EPA, dated March 28, 2012, can be accessed at [www.regulations.gov](http://www.regulations.gov) using docket ID No. EPA-R04-OAR-2011-0353. Based upon that commitment, on July 23, 2012, EPA took final action to conditionally approve infrastructure sub-element 110(a)(2)(E)(ii) regarding section 128(a)(1) requirements for purposes of the 1997 8-hour Ozone NAAQS. See 77 FR 42997. EPA is today

proposing to conditionally approve Tennessee's 2008 Lead infrastructure SIP for section 110(a)(2)(E)(ii) related to the section 128(a)(1) requirements based upon the State's earlier commitment to adopt the specific enforceable measures by July 23, 2013.<sup>11</sup> Failure by the State to adopt these provisions and submit them to EPA for incorporation into the SIP by July 23, 2013, would result in today's conditional approval being treated as a disapproval. Should that occur, EPA would provide the public with notice of such a disapproval in the **Federal Register**.

As with the conditional approvals proposed in this action, EPA is also proposing, in the alternative, to fully approve infrastructure section 110(a)(2)(E)(ii) regarding section 128(a)(1) requirements. In the event that Tennessee submits a revision to address the section 128(a)(1) requirements, and EPA approves that submission prior to finalizing this infrastructure SIP action, EPA believes Tennessee's 2008 Lead infrastructure SIP for section 110(a)(2)(E)(ii) will then be fully approvable. EPA has made the preliminary determination that Tennessee, once the above described changes have been incorporated into the SIP, will have adequate resources for implementation of 2008 Lead NAAQS.

6. 110(a)(2)(F) *Stationary source monitoring system*: Tennessee's infrastructure submission describes how the State has established requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. TDEC uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. These requirements are provided in Chapter 1200-3-10, *Required Sampling, Recording and Reporting*, of the Tennessee SIP.

Additionally, Tennessee is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The

<sup>11</sup> July 23, 2012, is one year from the approval date of EPA's final rulemaking to conditionally approve sub-section 110(a)(2)(E)(ii) regarding section 128(a)(1) for purposes of the 1997 8-hour Ozone NAAQS.

Tennessee's 2008 lead infrastructure submission as it relates to visibility. See 78 FR 11805 (February 20, 2013).



AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Tennessee made its latest update to the NEI on September 11, 2012. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site <http://www.epa.gov/ttn/chief/eiinformation.html>. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the stationary source monitoring systems related to the 2008 lead NAAQS.

7. 110(a)(2)(G) *Emergency power*: Chapter 1200–3–15, *Emergency Episode Requirements*, of the Tennessee SIP identifies air pollution emergency episodes and preplanned abatement strategies. These criteria have previously been approved by EPA. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for emergency powers related to the 2008 Lead NAAQS.

8. 110(a)(2)(H) *Future SIP revisions*: As previously discussed, TDEC is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Tennessee has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS.

Tennessee has one area, Bristol, TN, that is designated as nonattainment for the 2008 Lead NAAQS. On August 29, 2012, EPA finalized a clean data determination for Bristol, TN. See 77 FR 52232. This determination of attaining data is based upon complete, quality-assured and certified ambient air monitoring data for the 2009–2011 period showing that the Area has monitored attainment of the 2008 Lead NAAQS. Additionally, as a result of this determination, the requirements for the Area to submit an attainment demonstration, together with reasonably available control measures, a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines are

suspended for so long as the Area continues to attain the 2008 Lead NAAQS. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2008 Lead NAAQS when necessary.

9. 110(a)(2)(J). EPA is proposing to approve in part, and conditionally approve in part to approve Tennessee's infrastructure SIP for the 2008 lead NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127; and the PSD and visibility protection requirements of part C of the Act.

110(a)(2)(J) (121 consultation) *Consultation with government officials*: Chapter 1200–3–9 *Construction and Operating Permits*, as well as the Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Tennessee adopted state-wide consultation procedures for the implementation of transportation conformity. These consultation procedures include considerations associated with the development of mobile inventories for SIPs. Implementation of transportation conformity as outlined in the consultation procedures requires TDEC to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. EPA approved Tennessee's consultation procedures on May 16, 2003 (68 FR 26492). While transportation conformity requirements do not apply for lead because of the nature of the standard, the consultation procedures that TDEC has in place to implement transportation conformity requirements provides evidence of the State's ability to consult with other governmental agencies on air quality issues. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with government officials related to the 2008 Lead NAAQS when necessary.

110(a)(2)(J) (127 public notification) *Public notification*: Chapter 1200–3–15, *Emergency Episode Requirements*, requires that TDEC notify the public of any air pollution episode or NAAQS violation. EPA has made the

preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2008 Lead NAAQS when necessary.

110(a)(2)(J) (Part C) *PSD and visibility protection*: In this action, EPA is proposing to approve in part, and conditionally approve in part Tennessee's infrastructure SIP for the 2008 lead NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Chapter 1200–3–9, *Construction and Operating Permits*, of Tennessee's SIP pertains to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable. Chapter 1200–3–22, *Lead Emission Standards*, of Tennessee's SIP, published on August 12, 1985, specifies requirements for Reasonably Available Control Technology for significant existing sources of lead (October 29, 2001, 66 FR 44632). There are four other revisions to the Tennessee SIP that are necessary to meet the requirements of infrastructure element 110(a)(2)(C). These four revisions are related to the Ozone Implementation NSR Update (November 29, 2005, 70 FR 71612), the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (June 3, 2010, 75 FR 31514), the NSR PM<sub>2.5</sub> Rule (May 16, 2008, 73 FR 28321), and PM<sub>2.5</sub> PSD Increment-SILs-SMC Rule (October 20, 2010, 75 FR 64864).

Tennessee's SIP contains provisions for the State's PSD program for three of the four program requirements.<sup>12</sup> On October 4, 2012, Tennessee submitted a letter to EPA with a schedule and commitment to provide the necessary SIP revision to address its SIP deficiencies related to the October 20, 2010, final rulemaking related to PSD PM<sub>2.5</sub> Increments, SILs, and SMC Rule requirements. Based on Tennessee's commitment, EPA is proposing to conditionally approve section

<sup>12</sup> (1) EPA's approval of Tennessee's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements, (2) EPA's approval of Tennessee's PSD GHG Tailoring Rule revisions which addresses the thresholds for GHG permitting applicability in Tennessee, and (3) EPA's approval of Tennessee's NSR PM<sub>2.5</sub> Rule, which adopts required federal PSD and NSR permitting provisions governing the implementation of the NSR program for PM<sub>2.5</sub> as promulgated in the NSR PM<sub>2.5</sub> Rule.

For additional detailed information on these requirements, see section 3 above.

110(a)(2)(J), related to PSD consistent with section 110(k)(4) of the Act.

These SIP revisions<sup>13</sup> address requisite requirements of infrastructure element 110(a)(2)(J) and are necessary for today's rulemaking to propose to approve, in part, and conditionally approve, in part, infrastructure SIP element 110(a)(2)(J). EPA also notes that today's action is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(J) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

In this action, EPA is also proposing to conditionally approve Tennessee's infrastructure SIP for the 2008 Lead NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Minor sources are subject to the statutory requirements in section 110(a)(2)(C) of the CAA which requires "\* \* \* regulations of the modification and construction of any stationary source \* \* \* as necessary to assure that the NAAQS are achieved." These programs should be established in each state within 3 years of the promulgation

of a new revised NAAQS, and may be particularly important because virtually all sources of lead are minor sources.

EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 2008 lead NAAQS.

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary PM<sub>2.5</sub> NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. Tennessee has submitted SIP revisions for approval to satisfy the requirements of the CAA Section 169A and 169B, and the regional haze and best available retrofit technology rules contained in 40 CFR 51.308. On April 24, 2012, EPA published a final rulemaking regarding Tennessee's regional haze program. *See* 77 FR 24392. On November 27, 2012, EPA approved the Eastman Chemical Company BART portion of Tennessee's regional haze submittal. *See* 77 FR 70689. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to implement PSD programs and to provide for visibility protection related to the 2008 Lead NAAQS when necessary.

10. 110(a)(2)(K) *Air quality and modeling/data*: Chapter 1200–3–9–.01(4)(k), *Air Quality Models*, of the Tennessee SIP specify that required air modeling be conducted in accordance with 40 CFR Part 51, Appendix W "Guideline on Air Quality Models," as incorporated into the Tennessee SIP. These standards demonstrate that Tennessee has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the Lead NAAQS. Additionally, Tennessee supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the Lead NAAQS, for the southeastern states. Taken as a whole, Tennessee's air quality regulations and practices

demonstrate that TDEC has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the Lead NAAQS. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2008 Lead NAAQS when necessary.

11. 110(a)(2)(L) *Permitting fees*: As discussed above, Tennessee's SIP provides for the review of construction permits. Permitting fees in Tennessee are collected through the State's federally-approved title V fees program and consistent with Chapter 1200–03–26-.02, *Permit-Related Fees*, of the Tennessee Code. EPA has made the preliminary determination that Tennessee's SIP and practices adequately provide for permitting fees related to the 2008 Lead NAAQS when necessary.

12. 110(a)(2)(M) *Consultation/participation by affected local entities*: Chapter 1200–3–9–.01(4)(k), *Public Participation*, of the Tennessee SIP requires that TDEC notify the public of an application, preliminary determination, the activity or activities involved in the permit action, any emissions change associated with any permit modification, and the opportunity for comment prior to making a final permitting decision. By way of example, TDEC has recently worked closely with local political subdivisions during the development of its Transportation Conformity SIP, Regional Haze Implementation Plan, and Early Action Compacts. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with affected local entities related to the 2008 Lead NAAQS when necessary.

## V. Proposed Action

EPA is proposing alternative actions to (1) approve in full and (2) approve in part and conditionally approve in part. With the exception of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) related to PSD, 110(a)(2)(E)(ii), and 110(a)(2)(J) related to PSD, EPA is proposing to determine that Tennessee's infrastructure submission, provided to EPA on October 19, 2009, addressed the required infrastructure elements for the 2008 Lead NAAQS. EPA is proposing to approve in part and conditionally approve in part, Tennessee's SIP submission consistent with section 110(k)(3) of the CAA.

As described above, with the exception of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) related to PSD,

<sup>13</sup> (1) EPA's approval of Tennessee's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements, (2) EPA's approval of Tennessee's PSD GHG Tailoring Rule revisions which addresses the thresholds for GHG permitting applicability in Tennessee, (3) EPA's approval of Tennessee's NSR PM<sub>2.5</sub> Rule, which adopts required federal PSD and NNSR permitting provisions governing the implementation of the NSR program for PM<sub>2.5</sub> as promulgated in the NSR PM<sub>2.5</sub> Rule, and (4) EPA's proposed conditional approval of Tennessee's PSD PM<sub>2.5</sub> Increments, SILs, and SMC rulemaking which addresses rules that regulate the construction and modification of any major stationary source locating in an attainment or unclassifiable area, where the source's emissions may cause or contribute to a violation of the NAAQS.



110(a)(2)(E)(ii) (as it relates to section 128(a)(1), and 110(a)(2)(J) related to PSD TDEC has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to section 110 of the CAA to ensure that the 2008 lead NAAQS are implemented, enforced, and maintained in Tennessee. With respect to sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) related to PSD, and 110(a)(2)(J) related to PSD, EPA is proposing to conditionally approve Tennessee's infrastructure SIP based on an October 4, 2012, commitment that TDEC will provide the necessary SIP revision to address its SIP deficiencies related to the October 20, 2010, final rulemaking related to PSD PM<sub>2.5</sub> Increments, SILs, and SMC Rule requirements. With respect to section 110(a)(2)(E)(ii) (referencing section 128 of the CAA), EPA is proposing to conditionally approve Tennessee's infrastructure SIP based on a March 28, 2012, commitment that TDEC will adopt specific enforceable measures into its SIP and submit these revisions to EPA July 23, 2013, to address the applicable portions of section 128. EPA intends to move forward with finalizing the conditional approval for these elements consistent with section 110(k)(4) of the Act. EPA is also proposing to approve Tennessee's infrastructure submission for the 2008 Lead NAAQS, with the exception of section 110(a)(2)(E)(ii), because its October 19, 2009, submission is consistent with section 110 of the CAA.

## VI. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

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

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

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

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

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

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

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, and Recordkeeping requirements.

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

Dated: March 11, 2013.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2013-06418 Filed 3-19-13; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 52

[FAR Case 2012-016; Docket 2012-0016; Sequence 1]

RIN 9000-AM50

#### Federal Acquisition Regulation; Defense Base Act

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to clarify contractor and subcontractor responsibilities to obtain workers' compensation insurance or to qualify as a self-insurer, and other requirements, under the terms of the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before May 20, 2013 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2012-016 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2012-016." Select the link "Submit a Comment" that corresponds with "FAR Case 2012-016." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2012-016" on your attached document.

- *Fax:* 202-501-4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAR Case 2012-016, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward N. Chambers, Procurement