money. Other references included in Regulations 1.25 and 30.7 will be taken up when the Commission considers the proposed rulemaking related to investment of customer funds.

[FR Doc. 2011–18777 Filed 7–22–11; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–S049–2006–0675 (Formerly Docket No. S–049)]

RIN 1218–AB50

General Working Conditions in Shipyard Employment; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; correction.

SUMMARY: The Occupational Safety and Health Administration is correcting a final rule on General Working Conditions in Shipyard Employment published in the **Federal Register** of May 2, 2011 (76 FR 24576).

DATES: Effective August 1, 2011.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Frank Meilinger, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1999.

General and technical information: Joseph V. Daddura, Director, Office of Maritime, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

In FR Doc. 2011–9567 appearing on page 24576 in the **Federal Register** of Monday, May 2, 2011, the following corrections are made:

§ 1910.145 [Corrected]

■ 1. On page 24698, in the first column, in § 1910.145, in paragraph (a)(1), the first sentence ''These specifications apply to the design, application, and use of signs or symbols (as included in paragraphs (c) through (e) of this section) that indicate and, insofar as possible, define specific hazards that could harm workers or the public, or both, or to property damage'' is corrected to read ''These specifications apply to the design, application, and use of signs or symbols (as included in paragraphs (c) through (e) of this section) intended to indicate and, insofar as possible, to define specific hazards of a nature such that failure to designate them may lead to accidental injury to workers or the public, or both, or to property damage.''

§ 1910.147 [Corrected]

■ 2. On page 24698, in the second column, in § 1910.147, in paragraph (a)(1)(i), the first sentence ''This standard covers the servicing and maintenance of machines and equipment in which the energization or start up of the machines or equipment, or release of stored energy, could harm employees'' is corrected to read ''This standard covers the servicing and maintenance of machines and equipment in which the *unexpected* energization or start up of the machines or equipment, or release of stored energy could cause injury to employees.''

Signed at Washington, DC, on July 19, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–18601 Filed 7–22–11; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0303; FRL–9441–5]

Approval and Disapproval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving the State Implementation Plan (SIP) submission from the State of Wyoming to demonstrate that the SIP meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the ''infrastructure elements'' of section 110(a)(2). The State of Wyoming submitted two certifications, dated December 7, 2007 and December 10, 2009, that its SIP met these requirements for the 1997 ozone NAAQS. The December 7, 2007 certification was determined to be complete on March 27, 2008 (73 FR 16205). In addition, EPA is approving a May 11, 2011 SIP submittal from the State that revises the State's Prevention of Significant Deterioration (PSD) program.

DATES: *Effective Date:* This final rule is effective August 24, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2010–0303. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, *dolan.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

Table of Contents

I. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). 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 standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several ''infrastructure elements,'' listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time a state develops and submits its 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 a state's existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.[1]

On March 27, 2008, EPA published a final rule entitled, ''Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS'' (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or had failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that Wyoming had submitted a complete SIP (''Infrastructure SIP'') to meet these requirements.

On May 23, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of Wyoming (76 FR 29680) to act on the State's Infrastructure SIP for the 1997 ozone NAAQS. Specifically, in the NPR EPA proposed approval of Wyoming's SIP as meeting the requirements of section 110(a)(2) elements (A), (B), (D)(ii), (E), (F), (G), (H), (K), (L) and (M) with respect to the 1997 ozone NAAQS. EPA also proposed approval of revisions to Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 6, Section 4 (PSD) from Wyoming's May 11, 2011 submittal, specifically revisions which meet the requirements the phase 2 implementation rule for the 1997 ozone NAAQS (72 FR 71612, November 20, 2005), the NSR implementation rule for $PM_{2.5}$ (73 FR 28321, May 16, 2008), and the inserted definition of ''replacement unit,'' which reflects the language of 40 CFR 51.166 (b)(32)(i) through (iv). EPA did not propose action on sections 110(a)(2)(D)(i), (I), and the visibility protection requirement of section 110(a)(2)(J).[2] EPA proposed to disapprove 110(a)(2)(C) and (J) on the basis that Wyoming's SIP-approved PSD program does not properly regulate greenhouse gas (GHG) emissions.

On June 3, 2010, EPA promulgated the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (''Tailoring Rule'') (75 FR 31514), setting out requirements for application of PSD to emissions sources of greenhouse gases (GHG). On December 13, 2010, EPA issued a finding of substantial inadequacy and SIP call for seven states, including Wyoming, on the basis that the states' SIP-approved PSD programs did not apply PSD to GHG-emitting sources as required under the Tailoring Rule (75 FR 77698). Next, on December 29, 2010, EPA issued a finding that the seven states had failed to submit revisions to their SIPs as necessary to correct this inadequacy (75 FR 81874). Finally, on December 30, 2010, EPA established a federal implementation plan (FIP) in the seven states to ensure that PSD permits for sources emitting GHGs could be issued in accordance with the Tailoring Rule (75 FR 82246). As the Wyoming PSD program is currently subject to a finding of substantial inadequacy and SIP call, and Wyoming had not taken steps to remedy the inadequacy, EPA proposed to disapprove infrastructure elements 110(a)(2)(C) and (J) in the NPR as each requires the SIP to contain a PSD program that meets the requirements of part C of title I of the Act.

Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.[3] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (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''). EPA notes that there are two other substantive issues for which EPA likewise stated that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source new source review (NSR)''); and (ii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 Fed. Reg. 80,186 (December 31, 2002), as amended by 72 FR 32,526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might

[1] Memorandum from William T. Harnett, Director, Air Quality Policy Division, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (Oct. 2, 2007).

[2] See the NPR (76 FR 29680) for further explanation regarding the omission of elements 110(a)(2)(D)(i) and 110(a)(2)(I) from the proposal.

[3] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPS are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, 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 provisions, and some of which pertain to requirements for both authority and substantive provisions.[4] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[5]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[6] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[7] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the

[4] For example, section 110(a)(2)(E) 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 substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[5] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[6] See, e.g., Id., 70 FR 25,162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director, Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[8]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirement applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[9] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [10] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [11] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [12] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP 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 that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for

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

[9] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance''). EPA issued comparable guidance for the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[10] Id., at page 2.

[11] Id., at attachment A, page 1.

[12] Id., at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[13] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[14] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action 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 the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[15]

[13] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21,639 (April 18, 2011).

[14] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[15] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42,342 at 42,344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4,540 (Jan. 26, 2011) (final disapproval of such provisions).

II. Response to Comments

EPA received one letter on June 22, 2011 containing comments from WildEarth Guardians (WEG), an environmental organization. The significant comments made in WEG's June 22, 2011 letter and EPA's responses to those comments are given below.

Comment No. 1: The commenter expressed concern that the Wyoming SIP is failing to maintain the 1997 8-hour ozone NAAQS in Sublette County. As evidence, the commenter cited data from three monitors in Sublette County. The commenter argued that the data establish the Wyoming SIP is failing to meet the requirements of CAA section 110(a)(1) and that EPA cannot approve the Wyoming infrastructure SIP for the 1997 ozone NAAQS as a result.

EPA Response: EPA disagrees with the commenter's view that the monitor data presented by the commenter has a bearing on EPA's action on the State's infrastructure SIP submission. First, there are currently no nonattainment areas designated in Wyoming for the 1997 8-hour ozone NAAQS. Thus, the State is not currently under an obligation to submit a SIP to meet the requirements of Part D of title I. More importantly, as explained in the NPR, Part D requirements are outside the scope of this action. EPA therefore disagrees with the assertion that, as a result of the cited monitoring data, EPA cannot approve the Wyoming infrastructure SIP for the 1997 ozone NAAQS.

Comment No. 2: The commenter asserted that the Wyoming SIP does not meet the monitoring requirements of 40 CFR part 58 for the 1997 8-hour ozone NAAQS, and that EPA should therefore disapprove the Wyoming infrastructure SIP for element 110(a)(2)(B). The commenter argued that because the cities of Casper and Cheyenne each have an urbanized population greater than 50,000, both areas are required to have ozone monitors under 40 CFR part 58, Appendix D. The commenter concluded that, as neither city contains an ozone monitor, Wyoming's SIP does not fulfill the requirements of 110(a)(2)(B). The commenter further argued that a discussion of monitoring in Pinedale, Casper, Rock Springs, and Gillette in a recent Wyoming Monitoring Network Plan demonstrates a need for ''a more expansive network'' of ozone monitors in the State.

EPA Response: EPA disagrees with this commenter's conclusion with respect to whether the monitoring network required by the Wyoming SIP meets the current requirements. Table D–2 in Appendix D to 40 CFR part 58 sets the minimum number of required State and Local Air Monitoring Stations (SLAMS) for ozone. Footnote 4 to the table explicitly indicates that minimum monitoring requirements in the last column should apply in the absence of a design value. While both Casper and Cheyenne have populations greater than 50,000 (but less than 350,000), they lack ozone design values at this time. Therefore, the minimum number of required SLAMS monitors for ozone for Casper and Cheyenne is zero, and the current monitoring network, with respect to those two cities, meets the current requirements of 40 CFR part 58, Appendix D for ozone. The 2010 network assessment cited by the commenter and the 2011 network plan linked to by the commenter do not provide any information to the contrary. EPA therefore disagrees with the commenter's conclusion that the State's infrastructure SIP is not approvable at this time.

EPA notes, however, that it has proposed revisions to the current monitoring requirements for ozone. On July 16, 2009, EPA proposed to change the monitoring requirements, in part to insure that smaller metropolitan areas with populations between 50,000 and 350,000 that currently do not have ozone monitors will get them, in order to assure the health benefits of the NAAQS in these areas.[16] If EPA finalizes the proposed revisions to the monitoring requirements, this would help to address the concerns of the commenter.

Comment No. 3: The commenter expressed concern that monitoring is only required from May to September, whereas areas such as Sublette County have maximum ozone concentrations in the winter months. The commenter argued that EPA must assure the Wyoming SIP requires monitoring during the wintertime. According to the commenter, the failure to monitor in the winter months would be grounds for disapproval of the infrastructure SIP under section 110(a)(2)(B).

EPA Response: EPA is concerned with the wintertime ozone issues in western states. However, with respect to the season during which monitoring is currently required, the required ozone monitoring seasons are provided in 40 CFR part 58, Appendix D, which currently specifies monitoring from May through September. The proposed revision to the ozone monitoring

[16] See, ''Ambient Ozone Monitoring Regulations: Revisions to Network Design Requirements,'' 74 FR 34525, at 34527–28 (July 16, 2009).

requirements discussed in the response to comment 2 above would also revise the ozone monitoring season for Wyoming (74 FR at 34538). If EPA finalizes the proposed revision to the ozone monitoring season for Wyoming, the monitoring season will be extended and EPA anticipates that this would help to address the underlying concern of the commenter. At this point, however, Wyoming complies with the existing monitoring season requirements of Appendix D. Thus, the comment gives no basis for EPA to change its proposed approval of the Wyoming infrastructure SIP for element 110(a)(2)(B) for the 1997 8-hour ozone NAAQS.

Comment No. 4: The commenter expressed concern that Wyoming's title V program does not increase permit fees each year in accordance with the Consumer Price Index as required by title V of the CAA, citing 42 U.S.C. 7661a(b)(3)(B)(v) and 40 CFR 70.9(b)(2)(iv). The commenter argues that this creates an issue under section 110(a)(2)(L) that precludes approval of the State's infrastructure SIP.

EPA Response: EPA disagrees with this comment. As stated in the text of the section, the fees specified in 110(a)(2)(L) are no longer applicable to title V operating permit programs after approval of such programs. As noted in the NPR, final approval of the title V operating permit program became effective April 23, 1999 (64 FR 8523, Feb. 22, 1990). Therefore, EPA concludes that the Wyoming infrastructure SIP for the 1997 8-hour ozone NAAQS meets the requirements of section 110(a)(2)(L) with respect to the title V program.

III. Final Action

In this action, EPA is approving the following section 110(a)(2) infrastructure elements for Wyoming for the 1997 ozone NAAQS: (A), (B), (D)(ii), (E), (F), (G), (H), (K), (L), and (M). EPA is also approving Wyoming's May 11, 2011 SIP submittal that revises the State's PSD program.

In this action, EPA is disapproving section 110(a)(2)(C) and (J) for the 1997 ozone NAAQS.

IV. Statutory and Executive Order Reviews

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

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *September 23, 2011.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2011.

James B. Martin,

Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 2 U.S.C. 7401 et seq.

Subpart ZZ—Wyoming

■ 2. Section 52.2620 is amended by:

■ a. In paragraph (c)(1), revising the entry under Chapter 6 for ''Section 4''.

■ b. In paragraph (e), add an entry for ''XIX'', Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.

§ 52.2620 Identification of plan.

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(c) * * *

(1) * * *

State Citation	Title/subject	State adopted and effective date	EPA approval date and citation[1]	Explanations
*	*	*	*	*
Chapter 6				
*	*	*	*	*
Section 4	Prevention of Significant Deterioration.	7/8/10 and 9/7/10	6/30/11, 7/25/11 [Insert page number where the document begins].	
*	*	*	*	*

[1] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the Federal Register cited in this column for that particular provision.

* * * * * (e) * * *

Name of nonregulatory SP provision	Applicable geographic or non-attainment area	State submittal date/adopted date	EPA approval date and citation[3]	Explanation
*	*	*	*	*
XIX. Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour Ozone NAAQS.	Statewide	12/7/2007 and 12/10/2007	6/30/11, 7/25/11 [Insert page number where the document begins].	

[3] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the FEDERAL REGISTER cited in this column for that particular provision.

[FR Doc. 2011–18423 Filed 7–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0426; FRL–9442–7]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Permits by Rule and Regulations for Control of Air Pollution by Permits for New Construction or Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final action to approve portions of three revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on August 31, 1993, July 22, 1998, and October 5, 2010. These revisions amend existing sections and create new sections in Title 30 of the Texas Administrative Code (TAC), Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. The August 31, 1993, revision creates two new sections at 116.174 and 116.175 for the use of emission reductions as offsets in new source review permitting. The July 22, 1998, revision creates new section 116.116(f) allowing for the use of Discrete Emission Reduction Credits (DERC) to exceed emission limits in permits (permit allowables) and amends section 116.174 to update internal citations to other Texas regulations. The October 5, 2010, revision amends section 116.116(f) to update internal citations to other Texas regulations. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations and are consistent with EPA policies. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

DATES: This direct final rule is effective on September 23, 2011 without further notice, unless EPA receives relevant adverse comment by August 24, 2011. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2011–0426, by one of the following methods:

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

(2) *E-mail:* Ms. Erica Le Doux at *ledoux.erica@epa.gov*.

(3) *Fax:* Ms. Erica Le Doux, Air Permits Section (6PD–R), at fax number 214–665–6762.

(4) *Mail:* Ms. Erica Le Doux, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(5) *Hand or Courier Delivery:* Ms. Erica Le Doux, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 AM and 4:30 PM weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2011–0426. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information