

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Prevention of significant deterioration, Incorporation by reference, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements.

Dated: June 15, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—Approval and Promulgation of Implementation Plans

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

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

Subpart Q—Iowa

■ 2. Section 52.820 is amended by adding entries (43) and (44) in numerical order to table (e) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY SIP PROVISIONS

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(43) Sections 110(a)(1) and (2) Infrastructure Requirements 1997 PM _{2.5} NAAQS.	Statewide	3/21/08	6/23/16 [Insert Federal Register citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), prong 3, (E), (F), (G), (H), (J), (K), (L), and (M). 110(a)(2)(I) is not applicable.
(44) Sections 110(a)(1) and (2) Infrastructure Requirements 2006 PM _{2.5} NAAQS.	Statewide	7/23/13	6/23/16 [Insert Federal Register citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), prong 3, (E), (F), (G), (H), (J), (K), (L), and (M). 110(a)(2)(I) is not applicable.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2015-0824; FRL-9948-22-Region 5]

Air Plan Approval; Ohio; Infrastructure SIP Requirements for the 2012 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of the state implementation plan (SIP) submission from Ohio regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter (PM_{2.5}) National

Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before July 25, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2015-0824 at <http://www.regulations.gov> or via email to aburano.douglas@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What is the background of this SIP submission?
- II. What guidance is EPA using to evaluate this SIP submission?
- III. What is the result of EPA’s review of this SIP submission?
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

I. What is the background of this SIP submission?

A. What state SIP submission does this rulemaking address?

This rulemaking addresses a submission from the Ohio Environmental Protection Agency (OEPA), describing its infrastructure SIP for the 2012 PM_{2.5} NAAQS, dated December 4, 2015.

B. Why did the state make this SIP submission?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2012 PM_{2.5} NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled “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” (2007 Memo) and has issued additional guidance documents, the most recent on September 13, 2013, “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)” (2013 Memo). The SIP submission referenced in this rulemaking pertains to the applicable requirements of section 110(a)(1) and (2), and addresses the 2012 PM_{2.5} NAAQS. To the extent that the prevention of significant deterioration (PSD) program is non-NAAQS specific, a narrow evaluation of other NAAQS will be included in the appropriate sections.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submission from OEPA that addresses the infrastructure requirements of CAA

sections 110(a)(1) and 110(a)(2) for the 2012 PM_{2.5} NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address.

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

This rulemaking will not cover four substantive areas 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, that may be contrary to the CAA and EPA’s policies addressing such excess emissions (“SSM”); (ii) existing provisions related to “director’s variance” or “director’s discretion” that 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 PSD programs that may be inconsistent with current requirements of EPA’s “Final New Source Review (NSR) Improvement Rule,” 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June

13, 2007) (“NSR Reform”); and (iv) transport provisions under section 110(a)(2)(D). Instead, EPA has the authority to, and plans to, address each one of these substantive areas in separate rulemakings. A detailed history and interpretation of infrastructure SIP requirements can be found in EPA’s May 13, 2014, proposed rule entitled, “Infrastructure SIP Requirements for the 2008 Lead NAAQS” in the section, “What is the scope of this rulemaking?” (see 79 FR 27241 at 27242–27245).

II. What guidance is EPA using to evaluate this SIP submission?

EPA’s guidance for this infrastructure SIP submission is embodied in the 2007 Memo. Specifically, attachment A of the 2007 Memo (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. EPA issued additional guidance documents, the most recent being the 2013 Memo, which further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

III. What is the result of EPA’s review of this SIP submission?

As noted in the 2013 Memo, pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. OEPA provided the opportunity for public comment for its 2012 PM_{2.5} NAAQS infrastructure SIP submission during a public hearing held on November 23, 2015. The state did not receive any comments during the comment period. EPA is soliciting comment on our evaluation of the state’s infrastructure SIP submission in this notice of proposed rulemaking. OEPA provided detailed synopses of how its SIP submission meets each of the requirements in section 110(a)(2) for the 2012 PM_{2.5} NAAQS, as applicable. The following review evaluates the state’s submission.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.¹ In the context of an infrastructure SIP, EPA is

¹ See, e.g., EPA’s final rule on “National Ambient Air Quality Standards for Lead,” 73 FR 66964 at 67034.

not evaluating whether the existing SIP provisions satisfy nonattainment planning requirements. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Ohio Revised Code (ORC) 3704.03 provides the Director of Ohio EPA with the authority to develop rules and regulations necessary to meet state and Federal ambient air quality standards. Ohio regulates directly emitted particulate matter through the rules in SIP-approved Ohio Administrative Code (OAC) Chapter 3745–17. Ohio also has SIP-approved rules regulating emissions of specific precursors to PM_{2.5}. For example, OAC 3745–14 provides for the direct regulation of nitrogen oxides (NO_x) emissions, and OAC 3745–18 provides for the direct regulation of sulfur dioxide (SO₂) emissions. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2012 PM_{2.5} NAAQS.

As previously noted, EPA is not, in this action, proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. EPA determines that Ohio: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

OEPA continues to operate an air monitoring network. EPA approved Ohio's 2015–2016 Annual Air Monitoring Network Plan, including the plan for PM_{2.5}. OEPA enters air monitoring data into AQS, and the state provides EPA with prior notification when changes to its monitoring sites or network plan are being considered. EPA proposes to find that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 PM_{2.5} NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and NNSR programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers: (i) Enforcement of SIP measures; (ii) PSD provisions that explicitly identify NO_x as a precursor to ozone in the PSD program; (iii) identification of precursors to PM_{2.5} and accounting for condensables in the PSD program; (iv) PM_{2.5} increments in the PSD program; and, (v) greenhouse gas (GHG) permitting and the “Tailoring Rule.”²

Sub-Element (i): Enforcement of SIP Measures

Ohio EPA maintains an enforcement program to ensure compliance with SIP requirements. ORC 3704.03(R) provides the Director with the authority to enforce rules “consistent with the purpose of the air pollution control laws.” SIP-approved ORC 3704.03 provides the Director with the authority to continue to implement Ohio's minor NSR and major source PSD program. EPA proposes that Ohio has met the SIP enforcement requirements of section 110(a)(2)(C) with respect to the 2012 PM_{2.5} NAAQS.

Sub-Element (ii): PSD Provisions That Explicitly Identify NO_x as a Precursor to Ozone in the PSD Program

EPA's “Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply

²In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM_{2.5} NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (*see* 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012, proposed rulemaking for infrastructure SIPs for the 2006 PM_{2.5} NAAQS (*see* 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO_x as a precursor to ozone, PM_{2.5} precursors, condensable particulate matter, PM_{2.5} increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2010 NO₂ NAAQS.

in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline” (Phase 2 Rule) was published on November 29, 2005 (*see* 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_x as a precursor to ozone (70 FR 71612 at 71679, 71699–71700).

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including the specification of NO_x as a precursor to ozone provisions, by June 15, 2007 (70 FR 71612 at 71683).

EPA approved revisions to Ohio's PSD SIP reflecting these requirements on October 28, 2014 (79 FR 64119), and therefore, Ohio has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2012 PM_{2.5} NAAQS.

Sub-Element (iii): Identification of Precursors to PM_{2.5} and Accounting for Condensables in the PSD Program

On May 16, 2008 (*see* 73 FR 28321), EPA issued the Final Rule on the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})” (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM_{2.5} and other pollutants that contribute to secondary PM_{2.5} formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM_{2.5}, otherwise known as precursors. In the 2008 NSR Rule, EPA identified precursors to PM_{2.5} for the PSD program to be SO₂ and NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient PM_{2.5} concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to PM_{2.5} in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM_{2.5} concentrations.

The explicit references to SO₂, NO_x, and VOCs as they pertain to secondary PM_{2.5} formation are codified at 40 CFR 51.166(b)(49)(i)(b) and 40 CFR 52.21(b)(50)(i)(b). As part of identifying pollutants that are precursors to PM_{2.5}, the 2008 NSR Rule also required states to revise the definition of “significant” as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR

51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define “significant” for PM_{2.5} to mean the following emissions rates: 10 tpy of direct PM_{2.5}; 40 tpy of SO₂; and 40 tpy of NO_x (unless the state demonstrates to the Administrator’s satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area’s ambient PM_{2.5} concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (*see* 73 FR 28321 at 28341).³

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM_{2.5} and PM₁₀ emission limits in NSR permits. Instead, EPA determined that states had to account for condensables in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states’ PSD programs incorporating the inclusion of condensables were required to be submitted to EPA by May 16, 2011 (*see* 73 FR 28321 at 28341).

EPA approved revisions to Ohio’s PSD SIP reflecting these requirements on October 28, 2014 (79 FR 64119), and therefore Ohio has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2012 PM_{2.5} NAAQS.

³ EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA’s requirements for PM₁₀ nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council v. EPA*, No. 08–1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for PM_{2.5} 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 by the 2008 NSR rule in order to comply with the court’s decision. Accordingly, EPA’s approval of Ohio’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 CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three 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.

Sub-Element (iv): PM_{2.5} Increments in the PSD Program

On October 20, 2010, EPA issued the final rule on the “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (2010 NSR Rule). This rule established several components for making PSD permitting determinations for PM_{2.5}, including a system of “increments” which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in Table 1 below.

TABLE 1—PM_{2.5} INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER CUBIC METER

	Annual arithmetic mean	24-Hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new “major source baseline date” for PM_{2.5} as October 20, 2010, and a new trigger date for PM_{2.5} as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 40 CFR 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR Rule revised the definition of “baseline area” to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM_{2.5}. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

On October 28, 2014 (79 FR 64119), EPA finalized approval of the applicable PSD revisions for Ohio, therefore Ohio has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2012 PM_{2.5} NAAQS.

Sub-Element (v): GHG Permitting and the “Tailoring Rule”

With respect to Elements C and J, EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Ohio has

shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also found that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In order to act consistently with its understanding of the Court’s decision pending further judicial action to effectuate the decision, EPA is no longer applying EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state’s SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant: (I) That the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase from a modification (*see* 40 CFR 51.166(b)(48)(v)).

EPA will review the Federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court’s decision. The timing and content of subsequent EPA actions with respect to EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state’s program correctly addresses GHGs consistent with the Supreme Court’s decision.

At present, Ohio’s SIP is sufficient to satisfy elements C, D(i)(II), and J with respect to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain

limitations on GHG emissions based on the application of BACT. Although the approved Ohio PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy elements C, (D)(i)(II), and J. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision.

For the purposes of the 2012 PM_{2.5} NAAQS infrastructure SIPs, EPA reiterates that NSR reform regulations are not within the scope of these actions. Therefore, we are not taking action on existing NSR reform regulations for Ohio. EPA approved Ohio's minor NSR program on January 22, 2003 (68 FR 2909), and since that date, OEPA and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2012 PM_{2.5} NAAQS.

Certain sub-elements in this section overlap with elements of section 110(a)(2)(D)(i) and section 110(a)(2)(f). These links will be discussed in the appropriate areas below.

D. Section 110(a)(2)(D)—Interstate Transport

Section 110(a)(2)(D)(i)(I) requires 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. EPA is not taking action on this infrastructure element in regards to the 2012 PM_{2.5} NAAQS and will do so in a future rulemaking.

Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

EPA notes that Ohio's satisfaction of the applicable PSD requirements for the 2012 PM_{2.5} NAAQS has been detailed in the section addressing section 110(a)(2)(C). EPA notes that the actions in that section related to PSD are consistent with the actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

EPA has previously approved revisions to Ohio's SIP that meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that: (1) Explicitly identify NO_x as a precursor to ozone, (2) explicitly identify SO₂ and NO_x as precursors to PM_{2.5}, and (3) regulate condensable particulate matter in applicability determinations and in establishing emissions limits. EPA has also previously approved revisions to Ohio's SIP that incorporate the PM_{2.5} increments and the associated implementation regulations including the major source baseline date, trigger date, and PM_{2.5} significance level per the 2010 NSR Rule. Ohio's SIP contains provisions that adequately address the 2012 PM_{2.5} NAAQS.

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2013 Memo states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. In this rulemaking, EPA is not proposing to approve or disapprove Ohio's satisfaction of the visibility protection requirements of section 110(a)(2)(D)(i)(II) for the 2010 NO₂ or SO₂ NAAQS. Instead, EPA will evaluate Ohio's compliance with these requirements in a separate rulemaking.⁴

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Ohio has provisions in its SIP-approved OAC Chapter 3745–31, which is consistent with 40 CFR 51.166(q)(2)(iv), requiring new or modified sources to notify neighboring states of potential negative air quality

impacts, and has referenced this program as having adequate provisions to meet the requirements of section 126(a). EPA is proposing that Ohio has met the infrastructure SIP requirements of section 126(a) with respect to the 2012 PM_{2.5} NAAQS. Ohio does not have any obligations under any other subsection of section 126, nor does it have any pending obligations under section 115. EPA, therefore, is proposing that Ohio has met all applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii).

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

Sub-Element (i) and (iii): Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

At the time of its submission, OEPA included its most recent biennial budget with its submittal, which details the funding sources and program priorities addressing the required SIP programs. OEPA has routinely demonstrated that it retains adequate personnel to administer its air quality management program, and Ohio's environmental performance partnership agreement with EPA documents certain funding and personnel levels at OEPA. As discussed in previous sections, ORC 3704.03 provides the legal authority under state law to carry out the SIP. EPA proposes that Ohio has met the infrastructure SIP requirements of these portions of section 110(a)(2)(E) with respect to the 2012 PM_{2.5} NAAQS.

Sub-Element (ii): State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency

⁴ Ohio does have an approved regional haze plan for non-EGUs. Ohio's plan for EGUs relied on the Clean Air Interstate Rule that has been recently superseded by the Cross State Air Pollution Rule to which Ohio EGU sources are also subject.

with similar powers be adequately disclosed.

OEPA does not have a board that has the authority to approve enforcement orders or permitting actions as outlined in section 128(a)(1) of the CAA; instead, this authority rests with the Director of OEPA. Therefore, section 128(a)(1) of the CAA is not applicable in Ohio.

Under section 128(a)(2), the head of the executive agency with the power to approve enforcement orders or permits must adequately disclose any potential conflicts of interest. In its June 7, 2013, submission, OEPA notes that EPA has previously approved provisions into Ohio's SIP addressing these requirements (*see* 46 FR 57490). Notably, ORC 102: Public Officers—Ethics contains provisions that require the Director of OEPA (and his/her delegate) to file an annual statement with the ethics committee including potential conflicts of interest; furthermore, this annual filing is subject to public inspection. Therefore, EPA proposes that Ohio has met the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2012 PM_{2.5} NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

OEPA district offices and local air agencies are currently required to witness 50% of all source testing and review 100% of all tests. EPA-approved rules in OAC 3745–15 contain provisions for the submission of emissions reports, and OAC 3745–77 and OAC 3745–31 provide requirements for recordkeeping by sources. EPA recognizes that Ohio has routinely submitted quality assured analyses and data for publication, and therefore proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2012 PM_{2.5} NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. The 2013 Memo states that infrastructure SIP submissions should specify authority, vested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

The regulations at OAC 3745–25 contain provisions which allow the Director of OEPA to determine the conditions that comprise air pollution alerts, warnings, and emergencies. Moreover, the rules contained in OAC 3745–25 provide the requirement to implement emergency action plans in the event of an air quality alert or higher. EPA proposes that Ohio has met the applicable infrastructure SIP requirements for this portion of section 110(a)(2)(G) with respect to the 2012 PM_{2.5} NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

As previously mentioned, ORC 3704.03 provides the Director of OEPA with the authority to develop rules and regulations necessary to meet ambient air quality standards in all areas in the state as expeditiously as practicable, but not later than any deadlines applicable under the CAA. ORC 3704.03 also provides the Director of OEPA with the authority to develop programs for the prevention, and abatement of air pollution. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2012 PM_{2.5} NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection

The evaluation of the submission from Ohio with respect to the requirements of section 110(a)(2)(J) are described below.

Sub-Element (i): Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

OEPA actively participates in the regional planning efforts that include both the state rule developers as well as representatives from the FLMs and other affected stakeholders. The FLMs are also included in OEPA's interested party lists which provide announcements of draft and proposed rule packages. OAC 3745–31–06 is a SIP-approved rule which requires notification and the availability of public participation related to NSR actions; notification is provided to the general public, executives of the city or county where the source is located, other state or local air pollution control agencies, regional land use planning agencies, and FLMs. OAC 3704.03(K) is a SIP-approved rule that which requires giving reasonable public notice and conducting public hearings on any plans for the prevention, control, and abatement of air pollution that the Director of OEPA is required to submit to EPA. Additionally, Ohio is an active member of the Lake Michigan Air Director's Consortium (LADCO). Therefore, EPA proposes that Ohio has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 PM_{2.5} NAAQS.

Sub-Element (ii): Public Notification

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and must enhance public awareness of measures that can be taken to prevent exceedances.

OEPA maintains portions of its Web site specifically for issues related to the 2012 PM_{2.5} NAAQS.⁵ The information contained in these pages includes background on the health effects of each of these pollutants, the areas of most concern, and the strategies that the state has been taking to address the elevated levels, if any, of the pollutants. OEPA also actively populates EPA's AIRNOW program, and prepares annual data reports from its complete monitoring network. EPA proposes that Ohio has met the infrastructure SIP requirements

⁵ See <http://www.epa.ohio.gov/dapc/sip/sip.aspx>.

of this portion of section 110(a)(2)(J) with respect to the 2012 PM_{2.5} NAAQS.

Sub-Element (iii): PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Ohio's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and EPA notes that the actions for those sections are consistent with the actions for this portion of section 110(a)(2)(J).

Therefore, Ohio has met all of the infrastructure SIP requirements for PSD associated with section 110(a)(2)(J) for the 2012 PM_{2.5} NAAQS.

Sub-Element (iv): Visibility Protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (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, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIP for the 2012 PM_{2.5} NAAQS.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

SIPs must provide for performing air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

OEPA reviews the potential impact of major and some minor new sources, consistent with appendix W of 40 CFR parts 51 and 52 "Guidelines on Air Quality Models," as well as OEPA Engineering Guide 69. These modeling data are available to EPA upon request. The regulatory requirements related to PSD modeling can be found in SIP-approved rule OAC 3745–31–18. Ohio's authority to require modeling conducted by other entities, e.g., applicants, and the state's authority to perform modeling for attainment demonstrations can be found in SIP-approved ORC 3704.03(F). EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2012 PM_{2.5} NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate each major stationary source to pay

permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

OEPA implements and operates the title V permit program, which EPA approved on August 15, 1995 (60 FR 42045); revisions to the program were approved on November 20, 2003 (68 FR 65401). Additional rules that contain the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits can be found in ORC 3745.11. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2012 PM_{2.5} NAAQS.

M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities

States must consult with and allow participation from local political subdivisions affected by the SIP. OEPA follows approved procedures for allowing public participation, consistent with OAC 3745–47, which is part of the approved SIP. Consultation with local governments is authorized through ORC 3704.03(B). OEPA provides a public participation process for all stakeholders that includes a minimum of a 30-day comment period and a public hearing for all SIP related actions. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2012 PM_{2.5} NAAQS.

IV. What action is EPA taking?

EPA is proposing to approve most elements of the submission from OEPA certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2012 PM_{2.5} NAAQS. EPA's proposed actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

Element	2012 PM _{2.5}
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C): Program for enforcement of control measures	A
(D)1: Interstate Transport—Significant contribution	NA
(D)2: Interstate Transport—interfere with maintenance	NA
(D)3: PSD	A
(D)4: Visibility	NA
(D)5: Interstate and International Pollution Abatement	A
(E): Adequate resources	A
(E): State boards	A

Element	2012 PM _{2.5}
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)1: Consultation with government officials	A
(J)2: Public notification	A
(J)3: PSD	A
(J)4: Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the above table, the key is as follows:

A	Approve.
NA	No Action/Separate Rulemaking.
+	Not germane to infrastructure SIPs.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 State law as meeting Federal requirements and 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) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 14, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016-14894 Filed 6-22-16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2011-0698; FRL-9948-00-Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of the Indiana Portion of the Louisville Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; supplemental.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a supplement to its July 11, 2013, proposed approval of Indiana's request to redesignate the Indiana portion of the Louisville, Indiana-Kentucky, area to attainment for the 1997 annual national ambient air quality standard (NAAQS or standard) for fine particulate matter (PM_{2.5}). After EPA's proposed redesignation in 2013,

an audit of the Kentucky monitoring program identified problems which invalidated monitoring data for 2012 and the beginning of 2013. Because of this invalid data, the area could not meet the requirement that the entire area must demonstrate attainment of the standard using the most current three years of data. This supplemental proposal provides new quality-assured, quality-controlled data for the most recent three years of data showing that the entire area attains the 1997 PM_{2.5} standard. In the supplemental proposal EPA is proposing that the entire Louisville area is attaining the 1997 PM_{2.5} NAAQS based on the most recent three years of data. EPA also discusses the maintenance plan out-year emission projections, and the Cross-State Air Pollution Rule (CSAPR) remanded budgets impact on the Louisville area—because the status of these issues has changed from the initial proposal to now. EPA is seeking comment only on the issues raised in this supplemental proposal, and is not re-opening for comment other issues raised in the July 11, 2013, proposed approval.

DATES: Comments must be received on or before July 25, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2011-0698 at <http://www.regulations.gov> or via email to blakley.pamela@epa.gov. For comments submitted at [Regulations.gov](http://www.Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.Regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What is the background for the supplemental proposal?
- II. On what specific issues is EPA taking comment?
 - A. Louisville Area Design Values for 2013–2015; Entire Area Monitoring Attainment
 - B. Demonstration of Maintenance
 - C. CAIR and CSAPR
- III. Summary of Proposed Actions
- IV. Statutory and Executive Order Reviews

I. What is the background for the supplemental proposal?

On June 16, 2011, the Indiana Department of Environmental Management (IDEM) submitted a request for EPA to approve the redesignation of the Indiana portion of the Louisville (KY-IN) (Madison Township, Indiana, Jefferson County, Kentucky and Clark and Floyd Counties, Indiana) nonattainment area to attainment of the 1997 PM_{2.5} annual standard. Indiana's June 16, 2011, redesignation submittal contained complete, quality-assured and certified air monitoring data for the years 2008–2010.

On July 11, 2013, EPA proposed to determine that the Indiana portion of the Louisville area had met the requirements for redesignation under section 107(d)(3)(E) of the Clean Air Act (CAA) (78 FR 41735). This proposal was based upon our review of ambient air monitoring data from 2009–2011, and preliminary data from 2012. It contained several related actions.

First, EPA proposed to approve the request from IDEM to change the legal designation of the Indiana portion of the Louisville area from nonattainment to attainment for the 1997 annual PM_{2.5} NAAQS. EPA also proposed to approve Indiana's PM_{2.5} maintenance plan for the Indiana portion of the Louisville area as a revision to the Indiana state implementation plan (SIP) because the plan met the requirements of section 175A of the CAA. In addition, EPA proposed to approve emissions inventories for primary PM_{2.5}, and all its precursors as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA proposed a