EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA Approval	Explanation
*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour $PM_{2.5}$ NAAQS.	10/20/2009. 6/25/2012. 7/12/2012	7/10/2013, 78 FR 41311	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We are finalizing approval of the PSD source impact analysis requirements of section 110(a)(2)(C), (D)(i)(II), and (J), but are not finalizing action on the visibility protection requirements of (D)(i)(II), and the state board requirements of (E)(ii). We will address these requirements in a separate action.
	5/22/2013	4/7/2014, [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS].	This action addresses the following CAA elements: State board requirements of section 110(a)(2)(E)(ii).
*	*	*	* * *

■ 3. Section 52.1891 is amended by adding paragraph (d) to read as follows:

§ 52.1891 Section 110(a)(2) infrastructure requirements.

* * * * *

(d) Approval—In a June 7, 2013, submission, Ohio certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(E)(ii) for the 2006 24-hour $PM_{2.5}$ NAAQS.

[FR Doc. 2014–07564 Filed 4–4–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0299; FRL–9909–09–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The State of West Virginia has made a submittal addressing the infrastructure requirements for the 2008 ozone NAAQS.

DATES: This final rule is effective on May 7, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2013–0299. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On February 17, 2012, the West Virginia Department of Environmental Protection (WV DEP) submitted a SIP revision that addresses the infrastructure elements specified in section 110(a)(2) of the CAA, necessary to implement, maintain, and enforce the 2008 ozone NAAQS. On July 2, 2013 (78 FR 39650), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia proposing approval of West Virginia's submittal. In the NPR, EPA proposed approval of the following infrastructure elements: Section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. EPA has taken separate action on the portions of section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to West Virginia's prevention of significant deterioration (PSD) program and is taking separate action on section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards). West Virginia did not submit section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process. West Virginia also did not include a component to address section 110(a)(2)(D)(i)(I) as it is not required in accordance with the *EME Homer City* decision from the United States Court of Appeals for the District of Columbia Circuit, until EPA has defined a state's contribution to nonattainment or interference with maintenance in another state. *See EME Homer City Generation, LP* v. *EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert. granted*, 133 U.S. 2857 (2013). Unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, states such as West Virginia are not required to submit section 110(a)(2)(D)(i)(I) SIPs until the EPA has quantified their obligations under that section. Therefore, a 110(a)(2)(D)(i)(I) submission from West Virginia is not statutorily required at this time. As no such submission was made by the State, there is no 110(a)(2)(D)(i)(I) SIP pending

before the EPA. Thus, in this rulemaking notice, EPA is not taking action with respect to 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

The rationale supporting EPA's proposed rulemaking action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available in the docket for this rulemaking at www.regulations.gov, Docket ID Number EPA–R03–OAR–2013–0299.

II. Public Comments and EPA's Responses

EPA received three sets of comments on the July 2, 2013 proposed approval of West Virginia's 2008 ozone infrastructure SIP. The commenters include the State of Connecticut, the State of Maryland, and the Sierra Club. A full set of these comments is provided in the docket for today's final rulemaking action. As both States and the Sierra Club submitted comments regarding the interstate transport of pollution and the States did not comment on other issues, a summary of the comments dealing with transport and EPA's responses will be addressed first followed by summaries of and responses to the remainder of Sierra Club's comments.

A. "Interstate Transport" Comments

Comment 1: The State of Connecticut, the State of Maryland, and the Sierra Club (the commenters) assert that the ability of downwind states to attain the 2008 ozone NAAQS is substantially compromised by interstate transport of pollution from upwind states. The States comment that they have done their share to reduce in-state emissions, and EPA should ensure each state fully addresses its contribution to any other state's ozone nonattainment. The commenters state that section 110(a)(1) of the CAA requires states like West Virginia to submit, within three years of promulgation of a new NAAQS, an infrastructure SIP which provides for implementation, maintenance, and enforcement of such NAAQS within the state. The commenters remark that West Virginia was required to submit a complete SIP that demonstrated compliance with the good neighbor provision of section 110(a)(2)(D)(i)(I) of the CAA. Maryland also states that EPA must disapprove the infrastructure submittal for element 110(a)(2)(D)(i)(I) as West Virginia made no submittal for that element. Maryland also argues that if EPA believes *EME Homer City* prohibits it from disapproving the 110(a)(2)(D)(i)(I) portion of the West Virginia SIP before the state's significant contribution level is established, then EPA should immediately promulgate such a level. Sierra Club, in turn, states that EPA must disapprove West Virginia's SIP submission for failure to comply with 110(a)(2)(D)(i)(I). Sierra Club and Maryland both argue that EPA cannot rely on the D.C. Circuit decision in *EME Homer City Generation* v. *EPA*, 696 F.3d 7 (D.C. Cir. 2012) as an excuse to ignore obligations established by the Clean Air Act. Sierra Club suggests the relevant language in *EME Homer City* is dicta and that as this rulemaking action would be appealed to the Fourth Circuit, and EPA is under no obligation to follow that dicta.

Connecticut and Sierra Club state that EPA must make a finding under section 110(k) of the CAA that West Virginia failed to submit the required SIP elements to address section 110(a)(2)(D)(i)(I) of the CAA. Connecticut states that under section 110(c)(1) of the CAA such a finding creates a two year deadline for EPA to promulgate a Federal Implementation Plan (FIP). In addition, Connecticut and Maryland state that the CAA does not give EPA discretion to approve a SIP without the good neighbor provision on the grounds that EPA would take separate action to address West Virginia's 110(a)(2)(D)(i)(I) obligations. They assert that a FIP is the only separate action available to EPA under the CAA to address a state's failure to satisfy the requirements of 110(a)(2)(D)(i)(I). Sierra Club states that EPA must issue a FIP within two years of disapproval of West Virginia's SIP under section 110(c)(1)(A) of the CAA.

Response 1: In this rulemaking action, EPA is not taking any final action with respect to the provisions in section 110(a)(2)(D)(i)(I)—the portion of the good neighbor provision which addresses emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. West Virginia did not make a SIP submission to address the requirements of section 110(a)(2)(D)(i)(I) and thus there is no such submission upon which EPA could take action under section 110(k) of the CAA. EPA could not, as Maryland urges, act under section 110(k) to disapprove a SIP submission that has not been submitted to EPA. In addition, EPA could not, at this time, find that West Virginia has failed to submit a required SIP element for 110(a)(2)(D)(i)(I) as the D.C. Circuit in *EME Homer City* has held no such obligation to submit exists until EPA defines a state's obligations under 110(a)(2)(D)(i)(I). EPA also disagrees with the commenters that EPA cannot approve a SIP without the good neighbor provision and believes there is no basis for the contention that EPA must issue a FIP within two years, as EPA has neither disapproved, nor found that West Virginia failed to submit a required 110(a)(2)(D)(i)(I) SIP submission.

EPA acknowledges the commenters' concern that interstate transport of ozone and ozone precursors from upwind states to downwind states may have adverse consequences on the ability of downwind areas to attain the NAAQS in a timely fashion. EPA also agrees in general with the commenters that each state should address its contribution to another state's nonattainment and that section 110(a)(1) of the CAA requires states like West Virginia to submit, within three years of promulgation of a new or revised NAAQS, a plan which provides for implementation, maintenance and enforcement of such NAAQS within the state. Similarly, EPA has interpreted the CAA as providing that any finding by EPA that a state has failed to make such a submission would trigger an obligation for EPA to promulgate a FIP within two years if the state did not submit and EPA approve a SIP to correct the deficiency before EPA promulgates a FIP. However, as discussed further in this response, while EPA continues to agree that the plain language of the statute establishes these obligations, unless the D.C. Circuit decision in *EME Homer City* is reversed or modified by the Supreme Court, EPA intends to act in accordance with that opinion. In that opinion, the D.C. Circuit held that a 110(a)(2)(D)(i)(I) SIP to address emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state is not due until EPA has defined the state's obligations under that section of the CAA. Thus, at this time, West Virginia has no obligation to make a 110(a)(2)(D)(i)(I) SIP submittal and EPA has no obligation to issue a FIP.

As mentioned previously, EPA has historically interpreted the CAA as requiring states to submit SIPs addressing the requirements of section 110(a)(2)(D)(i)(I) of the CAA within three years of the promulgation or revision of a NAAQS. However, the U.S. Court of Appeals for the District of Columbia Circuit clearly articulated in its opinion in *EME Homer City* that SIPs under section 110(a)(2)(D)(i)(I) of the CAA are not due until EPA has defined a state's significant contribution to nonattainment or interference with maintenance in another state. *See EME Homer City*, 696 F.3d 7. EPA has not yet done this for the 2008 ozone NAAQS.

While the Supreme Court has agreed to review the *EME Homer City* decision, the D.C. Circuit's decision currently remains in place. EPA intends to act in accordance with the *EME Homer City* opinion unless it is reversed or otherwise modified by the Supreme Court. Therefore, in this rulemaking action, EPA is not taking any final action with respect to the provisions in section 110(a)(2)(D)(i)(I).[1]

EPA disagrees with the commenters' argument that EPA cannot approve a SIP without the good neighbor provision. Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve state SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. *See* S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA*, 832 F.2d 1071 (9th Cir. 1987)).

EPA further disagrees with commenters' suggestions that the Agency need not follow the D.C. Circuit opinion in *EME Homer City*. EPA intends to act in accordance with the D.C. Circuit opinion in *EME Homer City* unless it is reversed or otherwise modified by the Supreme Court. In addition, because the EPA rule known as the Cross State Air Pollution Rule (CSAPR) reviewed by the court in *EME Homer City* was designated by EPA as a "nationally applicable" rule within the meaning of CAA section 307(b)(1) with petitions for review of CSAPR required to be filed in the D.C. Circuit, EPA accordingly believes the D.C. Circuit's decision in *EME Homer City* is also nationally applicable. As such, EPA does not intend to take any actions, even if they are only reviewable in another federal Circuit Court of Appeals, which are inconsistent with the decision of the D.C. Circuit. EPA also finds no basis for one commenter's suggestion that the relevant portion of the D.C. Circuit opinion in *EME Homer City* opinion is dicta.

EPA interprets its authority under section 110(k)(3) of the CAA, as affording EPA the discretion to approve or conditionally approve individual elements of West Virginia's infrastructure submission for the 2008 eight-hour ozone NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) of the CAA with respect to that NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual severable measures in a plan submission. In short, EPA believes that even if West Virginia had made a SIP submission for section 110(a)(2)(D)(i)(I) of the CAA, which it has not, EPA would still have discretion under section 110(k) of the CAA to act upon the various individual elements of the state's infrastructure SIP submission, separately or together, as appropriate. The commenters raise no compelling legal or environmental rationale for an alternate interpretation.

EPA disagrees with the comment from Connecticut and Maryland regarding EPA's statement indicating an intent to take separate action on West Virginia's 110(a)(2)(D)(i)(I) obligations and that a FIP must be issued within two years. In the rulemaking action which proposed approval of portions of West Virginia's infrastructure SIP for the 2008 ozone NAAQS, EPA stated that its proposed action did not include *any* proposed action on section 110(a)(2)(D)(i)(I) of the CAA for West Virginia's February 17, 2012 infrastructure SIP submission because this element was not required until EPA quantified the state's obligations pursuant to the *EME Homer City* opinion. *See* (78 FR 39650, July 2, 2013). As EPA has neither disapproved, nor found that West Virginia failed to submit a required 110(a)(2)(D)(i)(I) SIP submission, there is consequently no basis for any contention that EPA must issue a FIP within two years. Moreover, the D.C. Circuit clearly held in *EME Homer City* that even where EPA had issued findings of failure to submit 110(a)(2)(D)(i)(I) SIPs and/or disapproved such SIPs, EPA lacked authority to promulgate FIPs under 110(c)(1) of the CAA where it had not previously quantified states' good neighbor obligations. *EME Homer City*, 696 F.3d at 31–37. And, as explained earlier in this rulemaking action, EPA intends to comply with that decision unless it is reversed or otherwise modified by the Supreme Court. *See also* (78 FR 14681, 16843, March 7, 2013) (concluding that, under the D.C. Circuit opinion in *EME Homer City*, disapproval of a 110(a)(2)(D)(i)(I) SIP submitted by Kentucky did not start a FIP clock).

In sum, the concerns raised by the commenters do not establish that it is inappropriate or unreasonable for EPA to approve the portions of West Virginia's February 17, 2012 infrastructure SIP submission for the 2008 ozone NAAQS. As discussed above, EPA has no obligation to find West Virginia failed to satisfy its good neighbor obligations and no action is required at this time. Moreover, EPA notes that it is actively working with state partners to assess next steps to address air pollution that crosses state boundaries and has begun work on a rulemaking to address transported air pollution affecting the ability of states in the eastern half of the United States to attain and maintain the 2008 ozone NAAQS, including defining certain states' obligations under 110(a)(2)(D)(i)(I). That rulemaking action is separate from this SIP approval action. It is also technically complex and must comply with the rulemaking requirements of section 307(d) of the CAA.

B. Sierra Club Comments

Sierra Club makes several additional comments which are provided in the docket for today's final rulemaking action and summarized below with EPA's response to each.

Comment 2: Sierra Club contends that EPA must disapprove West Virginia's 2008 eight-hour ozone infrastructure SIP revision with regard to the visibility components of section 110(a)(2)(D)(i)(II) and (J) of the CAA since West Virginia's Regional Haze SIP relies on visibility improvements from implementing the Clean Air Interstate Rule (CAIR). The commenter asserts that CAIR is not permanent and enforceable and they reference litigation in the D.C. Circuit related to CAIR. *See North Carolina* v. *EPA*, 531 F.3d 896, *on rehearing*, 550 F.3d 1176 (D.C. Cir. 2008). The commenter also cites to EPA statements in rulemaking actions on SIPs, such as attainment SIPs and maintenance SIPs, where EPA stated CAIR reductions were not permanent reductions. The commenter states that EPA could not rely on CAIR, even if permanent and enforceable, to support its proposed

[1] On January 15, 2013, EPA published findings of failure to submit with respect to the infrastructure SIP requirements for the 2008 ozone NAAQS. *See* 78 FR 2882. In that rulemaking action, EPA explained why it was not issuing any findings of failure to submit with respect to section 110(a)(2)(D)(i)(I). *Id.* at 2884–85. In that rulemaking action, EPA explained the opinion of the D.C. Circuit in *EME Homer City* concluded that a "SIP cannot be deemed to lack a required submission or deemed deficient for failure to meet the 110(a)(2)(D)(i)(I) obligation until after EPA quantifies the obligation." *See* 78 FR at 2884–85; *see also EME Homer City*, 696 F.3d at 32. Therefore, under *EME Homer City*, states like West Virginia have no obligation to make a SIP submission to address section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS until EPA has first defined the state's obligations.

approval of the visibility components in section 110(a)(2)(D)(i)(II) and (J) of the CAA for West Virginia's 2008 eight-hour ozone infrastructure SIP revision. The commenter asserts that the substitution of CAIR for best available retrofit technology (BART) for electric generating units (EGUs) violates the CAA including section 169A. The commenter includes comments challenging EPA's prior rulemakings that CAIR was "better than BART" because such exemption from BART does not meet the requirements of CAA section 169A(c) or 169A(b)(2)(A). The commenter states that CAIR as a substitute for BART for EGUs would result in the EGU sources having less stringent controls on emissions than would result from application of source-by-source BART.

Response 2: EPA disagrees with the commenter that West Virginia's infrastructure SIP does not meet the requirements for visibility protection in section 110(a)(2)(D)(i)(II) and (J) of the CAA. As explained in detail in EPA's proposed rulemaking related to today's rulemaking action, EPA believes that in light of the D.C. Circuit's decision to vacate CSAPR, also known as the Transport Rule (*see EME Homer City*, 696 F.3d 7), and the court's order for EPA to "continue administering CAIR pending the promulgation of a valid replacement," it is appropriate for EPA to rely at this time on CAIR to support approval of West Virginia's 2008 eight-hour ozone infrastructure revision, including as it relates to visibility. Based on the current direction from the court to continue administering CAIR, EPA believes that it is appropriate to rely on CAIR emission reductions for purposes of assessing the adequacy of West Virginia's infrastructure SIP revision with respect to prong 4 of section 110(a)(2)(D)(i)(II) while a valid replacement rule is developed and until submissions complying with any such new rule are submitted by the states and acted upon by EPA or until the *EME Homer City* case is resolved in a way that provides different direction regarding CAIR and CSAPR.

Furthermore, as neither the State of West Virginia nor EPA has taken any action to remove CAIR from the West Virginia SIP, CAIR remains part of the federally-approved SIP and can be considered in determining whether the SIP as a whole meets the requirement of prong 4 of 110(a)(2)(D)(i)(II). EPA is taking final rulemaking action to approve the infrastructure SIP submission with respect to prong 4 because West Virginia's Regional Haze SIP, which EPA has approved (*see* (77 FR 16937, March 23, 2012)), in combination with its SIP provisions to implement CAIR adequately prevents sources in West Virginia from interfering with measures adopted by other states to protect visibility during the first planning period as also described in detail in the TSD which accompanied the NPR.[2]

EPA disagrees with the commenter that the CAA does not allow states to rely on an alternative program such as CAIR in lieu of source-specific BART. EPA's regulations allowing states to adopt alternatives to BART that provide for greater reasonable progress, and EPA's determination that states may rely on CAIR to meet the BART requirements, have been upheld by the D.C. Circuit as meeting the requirements of the CAA. In the first case challenging the provisions in the regional haze rule (40 CFR 51.308) allowing for states to adopt alternative programs in lieu of BART, the court affirmed our interpretation of section 169A(b)(2) of the CAA as allowing for alternatives to BART where those alternatives will result in greater reasonable progress than BART. *Center for Energy and Economic Development* v. *EPA*, 398 F.3d 653, 660 (D.C. Cir. 2005) (finding reasonable the EPA's interpretation of section 169A(b)(2) of the CAA as requiring BART only as necessary to make reasonable progress). In the second case, *Utility Air Regulatory Group* v. *EPA*, 471 F.3d 1333 (D.C. Cir. 2006), the court specifically upheld our determination that states could rely on CAIR as an alternative program to BART for EGUs in the CAIR-affected states. The court concluded that the EPA's two-pronged test for determining whether an alternative program achieves greater reasonable progress was a reasonable one and also agreed with EPA that nothing in the CAA required the EPA to "impose a separate technology mandate for sources whose emissions affect Class I areas, rather than piggy-backing on solutions devised under other statutory categories, where such solutions meet the statutory requirements." *Id.* at 1340.

EPA also notes that CAIR has not been "vacated" as stated in Sierra Club's comment. As mentioned in EPA's TSD, CAIR was ultimately remanded by the D.C. Circuit to EPA without vacatur, and EPA continues to implement CAIR. EPA further notes that all of the rulemaking actions and proposed rulemaking actions cited by the commenter which discussed limited approvability of SIPs or redesignations due to the status of CAIR were issued by EPA prior to the vacatur of CSAPR when EPA was implementing CSAPR. Since the vacatur of CSAPR in August 2012 and with continued implementation of CAIR per the direction of the DC Circuit in *EME Homer City*, EPA has approved redesignations of areas to attainment of the 1997 fine particulate matter ($PM_{2.5}$) NAAQS in which states have relied on CAIR as an enforceable measure. *See* 77 FR 76415, December 28, 2012 (redesignation of Huntingdon-Ashland, West Virginia for 1997 $PM_{2.5}$ NAAQS which was proposed in 77 FR 68076, November 15, 2012); 78 FR 59841, September 30, 2013 (redesignation of Wheeling, West Virginia for 1997 $PM_{2.5}$ NAAQS which was proposed in 77 FR 73575, December 11, 2012); and 78 FR 56168, September 12, 2013 (redesignation of Parkersburg, West Virginia for 1997 $PM_{2.5}$ NAAQS which was proposed in 77 FR 73560, December 11, 2012).

More fundamentally, we disagree with the commenter that the adequacy of the BART measures in the West Virginia Regional Haze SIP is relevant to the question of whether the State's SIP meets the requirements of section 110(a)(2)(D)(i) of the CAA with respect to visibility. EPA interprets the visibility provisions in this section of the CAA as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. The regional haze rule includes a similar requirement at 40 CFR 51.308(d)(3). We note that on March 23, 2012, EPA determined that West Virginia's Regional Haze SIP adequately prevents sources in West Virginia from interfering with the reasonable progress goals adopted by other states to protect visibility during the first planning period. *See* 77 FR 16937. *See also* 76 FR 41158, 41175–41176 (proposing approval of West Virginia Regional Haze SIP). As EPA's review of the West Virginia Regional Haze SIP explains, the State relied on CAIR to achieve significant reductions in emissions to both meet the BART requirements and to address impacts of West Virginia on Class I areas in other

[2] Under sections 301(a) and 110(k)(6) of the CAA and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions*, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf*. Therefore, EPA believes it is appropriate to approve West Virginia's 2008 ozone NAAQS infrastructure SIP for section 110(a)(2)(D)(i)(II) as it meets the requirements of that section despite the limited approval status of West Virginia's regional haze SIP.

states. The question of whether or not CAIR satisfies the BART requirements has no bearing on whether these measures meet the requirements of section 110(a)(2)(D)(i)(II) of the CAA with respect to visibility. We also note that while the adequacy of the BART provisions in the West Virginia Regional Haze SIP is irrelevant to the question of whether the plan meets the requirements of section 110(a)(2)(D)(i)(II) of the CAA, CAIR was upheld as an alternative to BART in accordance with the requirements of Section 169A of the CAA by the DC Circuit in *Utility Air Regulatory Group v. EPA*.

In addition, with regard to the visibility protection aspect of section 110(a)(2)(J), as discussed in the TSD accompanying the NPR for this rulemaking action, EPA stated that it recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the establishment of a new NAAQS such as the 2008 ozone NAAQS, however, the visibility and regional haze program requirements under part C of Title I of the CAA do not change and there are no applicable visibility obligations under part C "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. Therefore, EPA appropriately proposed approval of West Virginia's 2008 ozone infrastructure SIP revision for section 110(a)(2)(J). As discussed for section 110(a)(2)(D)(i)(II) earlier in this rulemaking action and in the TSD for this rulemaking action, West Virginia has submitted SIP revisions to satisfy the requirements of part C of Title I of the CAA.[3]

In summary, EPA believes that it appropriately proposed approval of West Virginia's infrastructure SIP revision for the 2008 ozone NAAQS for the structural visibility protection requirements in 110(a)(2)(D)(i)(II).

Comment 3: Sierra Club states that EPA must disapprove West Virginia's 2008 eight-hour ozone infrastructure SIP revision for elements 110(a)(2)(D)(i)(II) and (J) of the CAA because the commenter asserts that West Virginia had failed to submit a five-year progress report on its implementation of West Virginia's Regional Haze SIP and also because EPA had not yet approved West Virginia's five-year progress report for regional haze. Sierra Club referenced a July 18, 2008 SIP submittal from West Virginia for regional haze as the basis for determining when the five-year progress report for West Virginia was due.

Response 3: EPA disagrees with the commenter that West Virginia's five-year progress report was not submitted at the time EPA proposed to approve West Virginia's infrastructure SIP for the 2008 ozone NAAQS on July 2, 2013. West Virginia submitted on April 30, 2013, as a SIP revision, its five-year progress report of its approved regional haze, to meet the progress report requirements in 40 CFR 51.308(g). The provisions under 40 CFR 51.308(g) impose a regulatory requirement for an evaluation of West Virginia's progress towards meeting its reasonable progress goals for Class I Federal areas located within West Virginia and in Class I Federal areas outside West Virginia which may be affected by emissions from inside West Virginia. EPA found West Virginia's April 30, 2013 progress report SIP submittal complete on June 13, 2013. EPA has taken action proposing approval on the SIP revision. *See* 79 FR 14460, March 14, 2014. EPA disagrees with the commenter that EPA's approval of West Virginia's five-year progress report is a required structural element necessary before EPA may approve West Virginia's infrastructure SIP for element 110(a)(2)(D)(i)(II).

Nevertheless, from EPA's review of data provided by West Virginia in its five-year progress report, including EPA's review of emissions data from 2008 through 2011 on West Virginia EGUs from EPA's Clean Air Markets Division (CAMD) as provided by the State, emissions of sulfur dioxide (SO_2), the primary contributor to visibility impairment in the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) region, have declined significantly in the State since the West Virginia Regional Haze SIP was submitted to EPA on June 18, 2008. Specifically, West Virginia's five-year progress report notes that in the EGU sector, EPA's CAMD data for 2010 and 2011 shows EGU SO_2 emissions in West Virginia are significantly below even what was predicted for 2018. EPA's review of visibility data from West Virginia in its five-year progress report also shows Class I areas impacted by sources within West Virginia are all meeting or below their reasonable progress goals. In addition, based on EPA's review of the West Virginia five-year progress report, EPA has no reason to question the accuracy of West Virginia's negative declaration to EPA pursuant to 40 CFR 51.308(h) that no revision to West Virginia's Regional Haze SIP is needed at this time to achieve established goals for visibility improvement and emissions reductions. Therefore, based upon EPA's review of the relevant visibility data, emissions data, and modeling results provided by West Virginia in the five-year progress report and upon the analysis provided in the TSD which accompanied the NPR for this rulemaking action, EPA continues to believe that the State's existing SIP (including the Regional Haze SIP and CAIR) contains adequate provisions prohibiting sources from emitting visibility impairing pollutants in amounts which would interfere with neighboring states' SIP measures to protect visibility.

Also, as stated previously, the visibility and regional haze program requirements under part C of Title I of the CAA do not change with the establishment of a new NAAQS such as the 2008 ozone NAAQS, and there are no applicable visibility obligations under part C "triggered" by section 110(a)(2)(J) when a new NAAQS becomes effective. Given this, West Virginia was under no obligation to address section 110(a)(2)(J) in its 2008 ozone infrastructure SIP.

Comment 4: Sierra Club contends that EPA must disapprove West Virginia's infrastructure SIP revision because the submittal relies on CAIR, considered by Sierra Club as a stopgap measure, for section 110(a)(2)(A) of the CAA, and therefore fails to impose restrictions on ozone sources and to ensure attainment and maintenance of the 2008 NAAQS. Sierra Club contends West Virginia cannot rely upon CAIR as an enforceable emissions limit for 110(a)(2)(A). In addition, Sierra Club suggests that EPA's statements are dismissive of the 2008 ozone NAAQS requiring any more than the less stringent 1997 ozone NAAQS and states that if states do not take any new actions to satisfy the 2008 ozone NAAQS, the 2008 ozone NAAQS will not be met in many areas and states will not attain and maintain the NAAQS. Sierra Club contends EPA must disapprove the West Virginia infrastructure SIP for the 2008 ozone NAAQS because West Virginia failed to adequately ensure attainment and maintenance of the NAAQS.

Sierra Club also states in its background comments that EPA may approve an infrastructure SIP only if EPA finds the SIP meets the requirements of section 110(a)(2) of the CAA and states such SIPs must include emission limitations that result in compliance with the NAAQS. Sierra Club further states in background that for a plan to be adequate, it must demonstrate the measures, rules, and regulations in the SIP are adequate to

[3] The TSD is available in the docket for this rulemaking at www.regulations.gov, Docket ID Number EPA–R03–OAR–2013–0299.

provide for timely attainment and maintenance of the standard and cited to 40 CFR 51.112 for support.

Response 4: EPA disagrees with the commenter that West Virginia cannot rely on CAIR for section 110(a)(2)(A) of the CAA. As discussed previously and as explained in detail in EPA's proposed rulemaking action related to today's rulemaking action, EPA believes that in light of the DC Circuit's decision to vacate CSAPR (*see EME Homer City*, 696 F.3d 7), and the court's order for EPA to "continue administering CAIR pending the promulgation of a valid replacement," it is appropriate for EPA to rely at this time on CAIR to support approval of West Virginia's 2008 eight-hour ozone infrastructure revision. EPA has been ordered by the DC Circuit to develop a new rule, and to continue implementing CAIR in the meantime. Unless the Supreme Court reverses or otherwise modifies the DC Circuit's decision on CSAPR in *EME Homer City*, EPA does not intend to act in a manner inconsistent with the decision of the DC Circuit. Based on the current direction from the court to continue administering CAIR, EPA believes that it is appropriate for West Virginia to rely on CAIR's requirements and provisions and is appropriate for EPA to consider CAIR for purposes of assessing the adequacy of West Virginia's infrastructure SIP revision with respect to ensuring attainment and maintenance of the 2008 NAAQS while a valid replacement rule is developed and until submissions complying with any such new rule are submitted by the states and acted upon by EPA or until the *EME Homer City* case is resolved in a way that provides different direction regarding CAIR and CSAPR.

Furthermore, as neither the State of West Virginia nor EPA has taken any action to remove CAIR from the West Virginia SIP, CAIR remains part of the federally-approved SIP and can be considered in determining whether the SIP as a whole meets the requirement for section 110(a)(2)(A) of the CAA. In addition, EPA described in its TSD accompanying the July 2, 2013 NPR proposing approval of portions of the West Virginia 2008 infrastructure SIP for the 2008 ozone NAAQS how West Virginia had adequate provisions in its SIP, including, but not limited to, regulations concerning control measures for nitrogen oxides (NOx) and volatile organic compounds (VOC), such as 45CSR13, 45CSR14, 45CSR19, 45CSR21, and 45CSR29, as enforceable emission limitations and other control measures, means, or techniques as necessary to meet applicable requirements of the CAA.[4] Therefore, EPA disagrees with the commenter that EPA must disapprove the West Virginia infrastructure SIP submittal for element 110(a)(2)(A) as CAIR and the other measures identified in the TSD for 110(a)(2)(A) are enforceable limitations for meeting applicable requirements in the CAA as EPA explained in detail in the TSD.

EPA believes that section 110(a)(2)(A) of the CAA is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS. In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state.

EPA's interpretation that infrastructure SIPs are more general planning SIPs is consistent with the statute as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in "air quality control regions" (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with the NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for "attainment" of the NAAQS and section 110(a)(2)(B) specified that the plan must include "emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS]." In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of the state were violating the NAAQS (i.e., were nonattainment) or were meeting the NAAQS (i.e., were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause "as may be necessary to insure attainment and maintenance [of the NAAQS]" with "as may be necessary or appropriate to meet the applicable requirements of this chapter." Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 of the CAA did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. And, more detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS.

EPA believes that the proper inquiry at this juncture is whether the State has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the submittal. Moreover, as addressed in EPA's proposed approval for this rulemaking action and mentioned earlier, West Virginia submitted a list of existing emission reduction measures in the SIP that control emissions of VOCs and NOx. West Virginia's SIP revision reflects several provisions that have the ability to reduce ground level ozone and its precursors. The West Virginia SIP relies on measures and programs used to implement previous ozone NAAQS. Because there is no substantive difference between the previous ozone NAAQS and the more recent ozone

[4] The TSD is available at *www.regulations.gov*, Docket ID Number EPA–R03–OAR–2013–0299. While EPA's TSD did not expressly reference CAIR in the discussion of West Virginia's measures addressing 110(a)(2)(A), the omission by EPA was inadvertent as the West Virginia ozone infrastructure SIP submittal included CAIR amongst other measures for section 110(a)(2)(A) and EPA's review included consideration of all the measures West Virginia included in its submission, including CAIR.

NAAQS, other than the level of the standard, the provisions relied on by West Virginia will provide benefits for the new NAAQS; in other words, the measures reduce overall ground-level ozone and its precursors and are not limited to reducing ozone levels to meet one specific NAAQS.

EPA asserts that section 110 of the CAA is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) of the CAA that the plan provide for "implementation, maintenance and enforcement" to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean for purposes of section 110, that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. As EPA stated in "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," dated September 13, 2013 (Infrastructure SIP Guidance), "[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both. Overall, the infrastructure SIP submission process provides an opportunity . . . to review the basic structural requirements of the air agency's air quality management program in light of each new or revised NAAQS." Infrastructure SIP Guidance at p. 2.

The commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits adequate to provide for timely attainment and maintenance of the standard is also not supported. As an initial matter, EPA notes this regulatory provision was initially promulgated and "restructured and consolidated" prior to the CAA Amendments of 1990, in which Congress removed all references to "attainment" in section 110(a)(2)(A). And, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing "control strategy" SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as section 175A and 182, and not to infrastructure SIPs. In the preamble to EPA's 1986 action "restructuring and consolidating" provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were "beyond the scope" of the rulemaking. *See* 51 FR 40656, November 7, 1986. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather was meant merely to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new "Part D" attainment planning obligations. *Id.* Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. *Id.* at 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new "part D" of the CAA, it is clear that the regulations being restructured and consolidated in the 1986 action on part 51 were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 ("Control strategy: SO_X and PM (portion)"), 51.14 ("Control strategy: CO, HC, O_X and NO_2 (portion)"), 51.80 ("Demonstration of attainment: Pb (portion)"), and 51.82 ("Air quality data (portion)"). *Id.* at 40660. Thus, the present-day 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs, and an infrastructure SIP is not such a plan.

Therefore, EPA finds 40 CFR 51.112 inapplicable to its analysis of the West Virginia ozone infrastructure SIP. EPA finds that CAIR and the other measures identified in the TSD for this rulemaking for section 110(a)(2)(A) of the CAA are enforceable limitations and measures for limiting emissions of NO_X and VOC for the 2008 ozone NAAQS.

Comment 5: Sierra Club contends that EPA must disapprove West Virginia's infrastructure SIP revision because it relies on the "vacated" rules, CAIR and CSAPR, to meet section 110(a)(2)(F) requirements that ensure source owners and operators install, maintain, and replace monitoring equipment and provide periodic reporting.

Response 5: First, as EPA noted earlier, CAIR has not been "vacated" as stated in Sierra Club's comment but was ultimately remanded by the D.C. Circuit to EPA without vacatur, and EPA continues to implement CAIR.[5] Further, EPA notes that (as explained in detail above) as EPA continues to administer CAIR as directed by the D.C. Circuit, EPA believes it is appropriate for West Virginia's infrastructure SIP to rely on CAIR at this time until a new rule is developed. Therefore, as CAIR is enforceable and being implemented, West Virginia can cite to a provision related to CAIR for its submission for addressing section 110(a)(2)(F) requirements.

In addition, as discussed in EPA's TSD, West Virginia's infrastructure SIP submission for the 2008 ozone NAAQS listed numerous SIP provisions (including the provisions related to CAIR as well as regulations 45CSR13, 45CSR14, and 45CSR19) to support that the existing West Virginia SIP ensures source owners and operators install, maintain and replace monitoring equipment, provide periodic reporting and correlate reports with emission standards under the CAA for section 110(a)(2)(F). EPA's TSD addressed how West Virginia's statutory and regulatory provisions provided for these requirements and most of these requirements are not related to CAIR. While 45CSR39 and 45CSR40, which are in the approved West Virginia SIP, address interstate transport of $PM_{2.5}$, NO_X, and ozone and are related to CAIR, these SIP provisions (45CSR39 and 45CSR40) also contain reporting and monitoring requirements (as are required for 110(a)(2)(F)) including references to federal provisions within 40 CFR part 75. Because EPA continues to implement CAIR and because the West Virginia SIP contains several provisions itemized in the TSD for this

[5] As discussed above, since the vacatur of CSAPR in August 2012 and with continued implementation of CAIR per the direction of the D.C. Circuit in *EME Homer City*, EPA has approved redesignations of areas to attainment of the 1997 $PM_{2.5}$ NAAQS in which states have relied on CAIR as an enforceable measure. See 77 FR 76415, December 28, 2012 (redesignation of Huntingdon-Ashland, West Virginia for 1997 $PM_{2.5}$ NAAQS which was proposed in 77 FR 68076, November 15, 2012); 78 FR 59841, September 30, 2013 (redesignation of Wheeling, West Virginia for 1997 $PM_{2.5}$ NAAQS which was proposed in 77 FR 73575, December 11, 2012); and 78 FR 56168, September 12, 2013 (redesignation of Parkersburg, West Virginia for 1997 $PM_{2.5}$ NAAQS which was proposed in 77 FR 73560, December 11, 2012).

rulemaking action addressing monitoring and reporting requirements for sources in West Virginia. EPA finds the West Virginia infrastructure SIP for the 2008 ozone NAAQS adequately addressed section 110(a)(2)(F), and EPA is taking final rulemaking action to approve the infrastructure SIP submission with respect to the requirements of section 110(a)(2)(F) of the CAA.

III. Final Action

EPA is approving the following infrastructure elements or portions thereof of West Virginia's SIP revision: Section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). EPA has taken separate rulemaking action on the portions of section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to West Virginia's PSD program and is taking separate action on section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards). This rulemaking action does not include section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process. This rulemaking action also does not include action on section 110(a)(2)(D)(i)(I), because this element, or portions thereof, is not required to be submitted by a state until the EPA has quantified a state's obligations. *See EME Homer City*, 696 F.3d 7.

IV. Statutory and Executive Order Reviews

A. General Requirements

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);
- 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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2014. 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, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS for the State of West Virginia, 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, Incorporation by reference, Reporting and recordkeeping requirements, Ozone.

Dated: March 21, 2014.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

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 XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by revising the entry for Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS. The amendment reads as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS.	Statewide	8/31/11, 2/17/12	10/17/12, 77 FR 63736	Approval of the following PSD-related elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J), except taking no action on the definition of "regulated NSR pollutant" found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See § 52.2522(i).
		2/17/12	4/7/2014 [Insert Federal Register page number where the document begins and date].	This action addresses the following CAA elements, or portions thereof: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).
*	*	*	*	*

[FR Doc. 2014–07589 Filed 4–4–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0413; FRL–9909–10–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of the NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The Commonwealth of Pennsylvania has made a submittal addressing the infrastructure requirements for the 2008 lead (Pb) NAAQS.

DATES: This final rule is effective on May 7, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2013–0413. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by email at *knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On July 16, 2013 (78 FR 42482), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania proposing approval of Pennsylvania's September 24, 2012 SIP submittal to satisfy several requirements of section 110(a)(2) of the CAA for the 2008 Pb NAAQS. In the NPR, EPA proposed approval of the following infrastructure elements: Sections 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), D(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). The NPR does not include section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process. EPA is taking separate action on the portion of 110(a)(2)(E)(ii) as it relates to CAA section 128 (State Boards).

The rationale supporting EPA's proposed action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available online at *www.regulations.gov*, Docket ID Number EPA–R03–OAR–2013–0413. On August 20, 2013, EPA received public comments on its July 16, 2013 NPR from the Berks County Commissioners (referred to herein as the commenter). A summary of the comments submitted and EPA's responses are provided in section II of this action.

II. Summary of Public Comments and EPA Responses

Comment: The commenter has raised several concerns related to lead monitoring and permitting in Berks County, Pennsylvania near the Exide Technologies secondary lead smelter facility (Exide). The commenter does not believe that EPA should approve the lead infrastructure SIP submitted by the Commonwealth for the 2008 lead NAAQS for several reasons, most of which are related to the commenter's concerns about the adequacy of the lead monitoring network and relate to the commenter's interpretation of the requirements of section 110(a)(2)(B) of the CAA.

First, the commenter contends that the existing network being used by the Commonwealth is not adequate and does not meet applicable EPA guidance (EPA–454/R–92–009) and 40 CFR part 58 Appendix D. Specifically, the commenter contends that the two