6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0177; FRL- 9917-67-Region-3]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland 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 the 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 Maryland has made a submittal addressing the infrastructure requirements for the 2008 ozone NAAQS.

DATES: This final rule is effective on **[insert date 30 days from date of publication]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0177. All documents in the docket are listed in the www.regulations.gov website. 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 Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

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SUPPLEMENTARY INFORMATION:

I. Background

On May 2, 2014 (79 FR 25054), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of several infrastructure elements to satisfy several requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS. The formal SIP revision (12-12) was submitted by the State of Maryland on December 27, 2012.

II. Summary of SIP Revision

In the NPR, EPA proposed approval of the following infrastructure elements: Sections 110(a)(2)(A), (B), (C), D(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA. The proposed rulemaking does not include action on section 110(a)(2)(I) of the CAA which pertains to the requirements of part D, Title I of the CAA as explained in the NPR. The proposed rulemaking action also did not include any action on Maryland's December 27, 2012 SIP

submission addressing section 110(a)(2)(D)(i)(I). EPA provided in the proposal that it will later take separate action on Maryland's December 27, 2012 SIP submission for the 2008 ozone NAAQS for section 110(a)(2)(D)(i)(I). 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 online at www.regulations.gov, Docket ID Number EPA-R03-OAQ-2014-0177.

III. Infrastructure SIPS and Greenhouse Gases

With respect to elements (C) and (J) in section 110(a)(2) of the CAA, 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 Prevention of Significant Deterioration (PSD) permitting program meeting the current requirements for all regulated New Source Review (NSR) pollutants. The requirements of element (D)(i)(II) in Section 110(a)(2) which requires a demonstration that emissions from sources in the state do not interfere with the PSD program of another state, may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Maryland has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (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 the 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 said that the 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, the EPA is not continuing to apply 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 and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise 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 the 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, EPA has determined the Maryland SIP is sufficient to satisfy elements C, D(i)(II), and J of section 110(a)(2) 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 Maryland 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) in section 110(a)(2) of the CAA. 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. Accordingly, the Supreme Court decision does not affect EPA's earlier proposed approval of Maryland's 2008 ozone infrastructure SIP as to the requirements of elements (C), (D)(i)(II), and (J) for Section 110(a)(2). EPA is taking final action to approve these elements.

IV. Public Comments and EPA's Responses

EPA received two sets of comments on the May 2, 2014 proposed rulemaking action on Maryland's 2008 ozone "infrastructure" SIP. The comments were submitted by the State of Maryland and the Sierra Club. The State of Maryland made a brief comment related to the subject matter of transported emissions while Sierra Club made more substantive comments on a variety of subjects including transport of emissions. A full set of these comments is provided in the docket for today's final rulemaking action.

A. Maryland's comment

Comment: The State of Maryland inquired regarding EPA's plans to take action on the transport portion of its 2008 ozone infrastructure SIP submittal in light of the recent Supreme

Court decision in *EPA et al v. EME Homer City Generation, L.P. et al,* 134 S. Ct. 1584, 2014 U.S. LEXIS 3108 (2014).[1]

Response: In this rulemaking, EPA is not taking final action with respect to the SIP revision addressing the provisions in section 110(a)(2)(D)(i)(I) of the CAA – 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. EPA did not propose to take any action in the NPR with respect to Maryland's obligations pursuant to section 110(a)(2)(D)(i)(I). As indicated in EPA's proposal, EPA anticipates taking later, separate action on the section 110(a)(2)(D)(i)(I) portion of Maryland's December 27, 2012 SIP submission for the 2008 ozone NAAQS.

B. Sierra Club Comments:

Comment 1: Sierra Club contends that EPA cannot approve the Maryland 2008 ozone infrastructure SIP revision because the plain language of section 110(a)(2)(A) of the CAA, legislative history of the CAA, case law, EPA regulations, such as 40 CFR 51.112(a), and EPA interpretations in rulemakings, require the inclusion of enforceable emission limits in an infrastructure SIP to prevent NAAQS violations[2] in areas not designated nonattainment. Specifically, Sierra Club cites air monitoring reports for Kent County, Maryland indicating

[1] The Maryland comment also inquired whether EPA would withdraw prior approvals of ozone infrastructure SIPs for other states which did not include action on section 110(a)(2)(D)(i)(I). As Maryland's comment about other state SIPs and EPA rulemaking on other states' SIPs is not relevant to this rulemaking, EPA need not provide any further response to this comment.

[2] The commenter frequently also uses the term "exceedance" in relation to the NAAQS. EPA believes that in many contexts the commenter meant a "violation" of the NAAQS. In general, the term exceedance means that the level of the pollutant is above the level of the NAAQS. However, for the 2008 8- hour ozone NAAQS, the form of the NAAQS allows some "exceedances" (levels above the 0.075 parts per million (ppm) 8-hour average) in a three year period before an area would be "violating" or "not attaining" the NAAQS.

violations of the NAAQS based on 2010-2012 and 2011-2013 design values. The commenter alleges that these violations demonstrate that the ozone infrastructure SIP fails to impose necessary restrictions on ozone precursor sources sufficient to ensure attainment and maintenance of the 2008 ozone NAAQS and compliance with section 110(a)(2)(A). The commenter claims Maryland must revise its infrastructure SIP to include enforceable emission limits and other measures to ensure attainment and maintenance of the 2008 ozone NAAQS. The commenter asserts the existing emission limits applicable to coal plants in Maryland's SIP were not intended to ensure maintenance of an 8-hour standard. The commenter asserts that Maryland's infrastructure SIP relies on the Maryland Healthy Air Act (HAA) for nitrogen oxide (NOx) limitations on Maryland's coal-fired power plants yet the HAA imposes only annual and ozone season caps on NOx at coal-fired power plants while the 8-hour ozone NAAQS requires shorter emissions averaging times. The commenter also urges EPA to encourage Maryland to expeditiously finalize new regulations on coal-fired power plants which Maryland is currently drafting which the commenter claims would require installation and operation of state-of-the-art controls on the largest contributors of NOx in Maryland. Until these new regulations are finalized, the commenter claims "Maryland has not tackled emissions" from the largest NOx sources and has not demonstrated its SIP is sufficient to attain and maintain the 2008 ozone NAAQS. Therefore, the commenter states EPA cannot approve Maryland's infrastructure SIP. Finally, the commenter states Maryland should use its infrastructure SIP process to address current ozone exceedances in Kent County and should prevent Kent County from being designated nonattainment for the 2008 ozone NAAQS by adding appropriate enforceable NOx emission limits on sources. The commenter states EPA cannot approve the infrastructure SIP and Maryland must amend its SIP to ensure the largest NOx sources cannot contribute to

exceedances of the 8-hour ozone NAAQS.

Response 1: EPA disagrees with the commenter that the statute is clear on its face that infrastructure SIPs must include detailed attainment and maintenance plans for all areas of the state and must be disapproved if air quality data that became available late in the process or after the SIP was due and submitted changes the status of one or more areas within the state. The commenter's specific arguments that the statutory language, legislative history, case law, EPA regulations, and prior rulemaking actions by EPA mandate the narrow interpretation they advocate are addressed below in subsections (1) through (5) of this response. EPA believes that section 110(a)(2)(A) 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.

As an initial matter, EPA disagrees that air quality monitoring data that became available, as here, four or more years following promulgation of the 2008 ozone NAAQS and shortly after the SIP was submitted in December 2012 provides a basis for disapproving the Maryland ozone infrastructure SIP. States must develop SIPs based on the information they have during the SIP development process, which preceded December 2012 (when Maryland submitted its SIP), and data that becomes available near the end of that process or after that process is completed cannot undermine the reasonable assumptions that were made by the state based on the information it had available as it developed the plan. Thus, the design values for 2012 and 2013 cited by the commenter (based respectively on the three-years of data from 2010-2012 and 2011-2013)

should not be considered in determining whether the SIP should be approved.[3] The suggestion that Maryland's ozone infrastructure SIP must include measures addressing violations of the standard that did not occur until shortly before or after the SIP was due and submitted, as is the case here, cannot be supported. The CAA provides states with three years to develop infrastructure SIPs and states cannot reasonably be expected to address the annual change in an area's design value for each year over that period, nor to predict the air quality data in periods after development and submission of the SIPs. Moreover, the CAA recognizes and has provisions to address changes in air quality over time, such as an area slipping from attainment to nonattainment or changing from nonattainment to attainment. These include provisions providing for redesignation in section 107(d) and provisions in section 110(k)(5) allowing EPA to call on the state to revise its SIP, as appropriate.

The commenter suggests that EPA must disapprove the Maryland ozone infrastructure SIP because the fact that an area in Maryland now has air quality data slightly above the standard proves that the infrastructure SIP is inadequate to demonstrate attainment and maintenance for that area.[4] EPA disagrees with the commenter because EPA does not believe that section 110(a)(2)(A) requires detailed planning SIPs demonstrating either attainment or maintenance for specific geographic areas of the state. The infrastructure SIP is triggered by promulgation of the NAAQS, not designation. Moreover, infrastructure SIPs are due three years following promulgation of the NAAQS and designations are not due until two years (or in some cases three years) following promulgation of the NAAQS. Thus, during a significant portion of the period

[3] The design values for 2012 and 2013 were certified in April 2013 and April 2014 respectively.
[4] EPA notes that preliminary monitoring data for 2014 indicates that the 2012-2014 design value for Kent County, Maryland will meet the 2008 ozone NAAQS. The 2014 data is not complete, quality assured or certified at this time.

that a state has available for developing the infrastructure SIP, it does not know what the designation will be for individual areas of the state.[5] 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

[5] While it is true that there may be some monitors within a state with values so high as to make a nonattainment designation of the county with that monitor almost a certainty, the geographic boundaries of the nonattainment area associated with that monitor would not be known until EPA issues final designations. Moreover, the area of concern to the commenter does not fit that description in any event.

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 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 shares the commenter's concern regarding the area that is monitoring violations of the 2008 8-hour ozone NAAQS based on its 2012 and 2013 design values and is working with state and local agencies to address such violations. By approving Maryland's infrastructure SIP revision, EPA is affirming that Maryland has sufficient authority to take the types of actions required by the CAA in order to bring such areas back into attainment. For all of these reasons, EPA disagrees with the commenter that EPA must disapprove an infrastructure SIP revision if there are monitored violations of the standard in the state and the section 110(a)(2)(A) revision does

not have detailed plans for demonstrating how the state will bring that area into attainment or for demonstrating maintenance. EPA believes the state has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the submittal. EPA disagrees with the commenter that Maryland should use the infrastructure SIP required by section 110(a)(1) and (2) of the CAA to address any "exceedances" of the 2008 ozone NAAQS or to avoid a designation of nonattainment for Kent County. Other provisions in part D of the CAA address the attainment planning process while section 107(d) of the CAA addresses designations of areas for attainment or nonattainment with a NAAQS. While Maryland may decide to regulate additional sources for pursuing emission reductions in the State to strengthen its SIP, such actions are not relevant to our approval of Maryland's infrastructure SIP in accordance with section 110 of the CAA. As discussed previously, our inquiry at this juncture is whether Maryland's SIP has the required structural elements.

Moreover, as addressed in EPA's proposed approval for this rule, Maryland identified existing emission reduction measures in the SIP that control emissions of volatile organic compounds (VOCs) and NOx. Maryland's SIP revision reflects several provisions that have the ability to reduce ground level ozone and its precursors. The Maryland SIP relies on measures and programs used to address previous ozone NAAQS. Because there is no substantive difference between the previous ozone NAAQS and the more recent ozone NAAQS, other than the level of the standard, the provisions relied on by Maryland 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.[6]

[6] Thus, EPA disagrees with the commenter's assertion that Maryland has not addressed the largest emitters of NOx in the State. Maryland's HAA specifically imposed NOx emission limits on coal-fired power plants in Maryland.

Finally, EPA appreciates the commenter's support of Maryland's pursuit of additional NOx emission limitations at coal-fired power plants in Maryland. Additional NOx regulations on emissions will likely strengthen the Maryland SIP and lead to additional reductions in NOx emissions benefiting Maryland. However, EPA does not believe that approval of the infrastructure SIP is contingent on Maryland adopting this rule. Congress established the CAA such that each state has primary responsibility for assuring air quality within the state and determines an emission reduction program for its areas subject to EPA approval, with such approval dependent upon whether the SIP as a whole meets the applicable requirements of the CAA. *See Commonwealth of Virginia, et al., v. EPA*, 108 F.3d 1397, 1410 (D.C. Cir. 1997) (citing *Natural Resources Defense Council, Inc. v. Browner*, 57 F.3d 1122, 1123 (D.C.Cir.1995)). EPA cannot condition approval of the Maryland infrastructure SIP upon inclusion of a particular emission reduction program as long as the SIP otherwise meets the requirements of the CAA. As explained in the NPR and the TSD, Maryland's ozone infrastructure SIP meets the requirements in section 110(a)(2).[7]

1. The Plain Language of the CAA

Comment 2: The commenter states that on its face the CAA "requires I-SIPs to be adequate to prevent exceedances of the NAAQS." In support, the commenter quotes the language in section 110(a)(1) which requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which commenter claims include the maintenance plan requirement. Sierra Club notes

[7] As stated previously, EPA will take later, separate action on Maryland's ozone infrastructure SIP submittal regarding the portion of the SIP submittal addressing section 110(a)(2)(D)(i)(I).

the CAA definition of emission limit and reads these provisions together to require "enforceable emission limits on source emissions sufficient to ensure maintenance of the NAAQS."

Response 2: EPA disagrees that section 110 is clear "on its face" and must be interpreted in the manner suggested by Sierra Club. As explained previously, section 110 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 interprets the requirement in section 110(a)(2)(A) 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 makes general allegations that Maryland does not have sufficient protective measures addressing ozone pollution. EPA addressed the adequacy of Maryland's infrastructure SIP for 110(a)(2)(A) for purposes of meeting applicable requirements of the CAA in the TSD accompanying the May 2, 2014 NPR and explained why the SIP includes enforceable emission limitations and other control measures. These include applicable portions of COMAR 26.11 such as COMAR 26.11.02, and COMAR 26.11.06.14. As discussed in the TSD accompanying the May 2, 2014 NPR, Maryland's enforceable emission limits, control measures, and related SIP approved regulations can be found in 40 CFR 52.1070. These include enforceable emissions limits, control measures, fees, and compliance schedules adopted for the 1-hour and 1997 8-hour ozone NAAQS but which will also provide ozone reductions benefits for the 2008 ozone NAAQS.

2. The Legislative History of the CAA

Comment 3: Sierra Club cites two excerpts from the legislative history of the CAA Amendments of 1970 claiming they support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show maintenance of the NAAQS in all areas of Maryland. Sierra Club also contends that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 3: As provided in the previous response, the CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined the

structure of the Act and deleted relevant language from section 110 concerning demonstrating attainment. In any event, the two excerpts of legislative history the commenter cites merely provide that states should include enforceable emission limits in their SIPs and they do not mention or otherwise address whether states are required to include maintenance plans for all areas of the state as part of the infrastructure SIP. As provided earlier in this rulemaking action, the TSD for the proposed rule explains why the SIP includes enforceable emissions limitations and meets the requirement in section 110(a)(2)(A).

3. Case Law

Comment 4: Sierra Club also discusses several cases applying the CAA which Sierra Club claims support their contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent violations of the NAAQS. Sierra Club first cites to language in *Train v. NRDC*, 421 U.S. 60, 78 (1975), addressing the requirement for "emission limitations" and stating that emission limitations "are specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meet the national standards." Sierra Club also cites to *Pennsylvania Dept. of Envtl. Resources v. EPA*, 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS and *Mision Industrial, Inc. v. EPA*, 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Dept. of Envtl. Conservation v. EPA*, 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also stated that "SIPs must include certain measures Congress specified" to ensure attainment of the NAAQS. The commenter also quotes several additional opinions in this vein.

Mont. Sulphur & Chem. Co. v. EPA, 666 F.3d 1174, 1180 (9th Cir. 2012) ("The Clean Air Act directs states to develop implementation plans – SIPs – that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations"); *Hall v. EPA* 273 F.3d 1146, 1153 (9th Cir. 2001) ("Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State"). Finally, the commenter cites *Mich. Dept. of Envtl. Quality v. Browner*, 230 F.3d 181 (6th Cir. 2000) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS.

Response 4: None of the cases the commenter cites support the commenter's contention that section 110(a)(2)(A) is clear that infrastructure SIPs must include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state nor do they shed light on how section 110(a)(2)(A) may reasonably be interpreted. With the exception of *Train*, none of the cases the commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, the courts reference section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background section of decisions in the context of a challenge to an EPA action on revisions to a SIP that was required and approved as meeting other provisions of the CAA or in the context of an enforcement action.

In *Train*, 421 U.S. 60, a case that was decided almost 40 years ago, the Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or

were "postponements" that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The Court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus the issue was not whether a section 110 SIP needs to provide for attainment or whether emissions limits are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The Court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the Court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of "emissions limitation" not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the

commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). The commenter does not raise any concerns about whether the measures relied on by the state in the infrastructure SIP are "emissions limitations" and the decision in this case has no bearing here.[8] In *Mont. Sulphur & Chem. Co.*, 666 F.3d 1174, the Court was reviewing a federal implementation plan that EPA promulgated after a long history of the state failing to submit an adequate state implementation plan. The Court cited generally to sections 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations but this language was not part of the Court's holding in the case. The commenter suggests that *Alaska Dept. of Envtl. Conservation*, 540 U.S. 461, stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the Court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the Court makes no mention of the changed language. Furthermore, the commenter also quotes the Court's statement that "SIPs must include certain measures Congress specified" but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's "new source" permitting program, not its infrastructure SIP.

Two of the cases the commenter cites, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret CAA section 110(l), the provision governing "revisions" to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section

[8] While the commenter does contend that the State shouldn't be allowed to rely on emission reductions that were developed for the prior ozone standards (which we address above), it does not claim that any of the measures are not "emissions limitations" within the definition of the CAA.

110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

4. EPA Regulations, Such as 40 CFR 51.112(a)

Comment 5: The commenter cites to 40 CFR 51.112(a), providing that "[e]ach plan must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS]." The commenter asserts that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. The commenter states that "[a]lthough these regulations were developed before the Clean Air Act separated infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations apply to I-SIPs." The commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that "[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act …." 51 FR 40656, 40656 (November 7, 1986).

Response 5: The commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits "adequate to prohibit NAAQS exceedances" and adequate or sufficient to ensure the maintenance of the NAAQS is not supported. As an initial matter, EPA notes and the commenter recognizes 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. The commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's 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. 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. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. 51 FR 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 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 the infrastructure SIP is not such a plan.

5. EPA Interpretations in Other Rulemakings

Comment 6: The commenter also references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs and claimed they were actions in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject infrastructure SIPs. The commenter first

points to a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the sulfur dioxide (SO_2) NAAQS. In that action, EPA cited section 110(a)(2)(A) as a basis for disapproving a revision to the State plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, Sierra Club cites a 2013 disapproval of a revision to the SO_2 SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the State. In its proposed disapproval, EPA relied on 40 CFR 51.112(a) in proposing to reject the revision, stating that the State had not demonstrated that the emission limit was "redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions." EPA further stated in that proposed disapproval that the State had not demonstrated that removal of the limit would not "affect the validity of the emission rates used in the existing attainment demonstration." Additionally, the commenter states EPA in its September 2013 Infrastructure SIP Guidance purported to postpone certain start-up, shutdown, and malfunction (SSM) requirements but did not postpone other infrastructure SIP requirements, which the commenter asserts indicates the CAA requires infrastructure SIPs to include enforceable limits adequate to ensure attainment of NAAQS and to impose limits without delay.

Response 6: EPA does not agree that the two prior actions referenced by the commenter establish how EPA reviews infrastructure SIPs. It is clear from both the final Missouri rule and the proposed and final Indiana rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would relax the stringency of an already approved SIP. EPA's partial approval and partial disapproval of

revisions to restrictions on emissions of sulfur compounds for the Missouri SIP in 71 FR 12623 addressed a control strategy SIP and not an infrastructure SIP. The Indiana action provides even less support for the commenter's position. In that case, the State had an approved SO_2 attainment plan and was seeking to remove from the SIP provisions relied on as part of the modeled attainment demonstration. EPA proposed that the State had failed to demonstrate under section 110(l) of the CAA why the SIP revision would not result in increased SO_2 emissions and thus interfere with attainment of the NAAQS. Nothing in that rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved SIP will not interfere with attainment of the NAAQS.

Finally, EPA disagrees with the comment regarding the Infrastructure SIP Guidance. The commenter correctly asserts that EPA in its September 2013 Infrastructure SIP Guidance clearly stated that EPA does not interpret section 110(a)(2) to require state air agencies and the EPA to address potentially deficient pre-existing SSM SIP provisions when acting on an infrastructure SIP particularly because EPA has alternative tools in the CAA to address such deficiencies. Infrastructure SIP Guidance at pgs. 19-20. However, this affirmative statement regarding potential SSM deficiencies in a state's SIP cannot be construed to mean or imply EPA cannot approve an infrastructure SIP without a demonstration that the SIP contains adequate enforceable limits to ensure attainment with a NAAQS. For all of the reasons discussed previously, we do not interpret section 110(a)(2)(A) to require that the state demonstrate attainment of the NAAQS. As explained above, and similar to our position on SSM deficiencies, the CAA establishes

separate provisions that govern attainment SIPs for areas. As discussed previously, EPA reviews infrastructure SIPs to ensure a SIP has the appropriate structural requirements.

Comment 7: The commenter states that EPA must evaluate Maryland's provisions submitted in the 2008 ozone NAAQS infrastructure SIP to address section 110(a)(2)(D)(i)(I) and determine whether they are sufficient enough to meet requirements of section 110(a)(2)(D)(i)(I). In light of the Supreme Court's decision in *EME Homer City* in April 2014, the commenter argues that the EPA should act quickly to address pollution that may be contributing to another state's nonattainment or interfering with another state's maintenance of the 2008 ozone NAAQS. The commenter argues EPA must evaluate whether Maryland addresses the section 110(a)(2)(D)(i)(I) requirements regarding emissions that would contribute to exceedances of or interfere with the maintenance of the 2008 ozone NAAQS and cannot delay its review of Maryland's provisions to address such requirements. The commenter states EPA must disapprove the Maryland infrastructure SIP transport provision and adequately address the impact of ozone emissions from Maryland on other states. Because Maryland's transport SIP submittal relies on CSAPR and the HAA, the commenter asserts EPA should determine Maryland has not adequately addressed its cross-state impacts. The commenter claims CSAPR only addresses the less stringent 1997 ozone NAAQS and claims that even Maryland said additional reductions are needed for 2008 ozone NAAQS beyond CSAPR. The commenter also claims Maryland's HAA was developed under the "outdated" 1997 ozone NAAQS and claims Maryland's reductions from the HAA do not demonstrate Maryland is not contributing to nonattainment or interfering with maintenance of the NAAQS. The commenter also claims Maryland cannot rely on voluntary control measures to address transport of emissions. Therefore, the commenter asserts EPA cannot approve the

Maryland infrastructure SIP and Maryland must revise its SIP to address section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

Response 7: As EPA has stated previously both in the NPR and this final rulemaking, EPA is not taking any final action with respect to the good neighbor provisions in section 110(a)(2)(D)(i)(I). In the NPR, EPA did not propose to take any action with respect to Maryland's obligations pursuant to section 110(a)(2)(D)(i)(I) and is not, in this rulemaking action, taking any such action. Thus, the comments relating to the substance and approvability of Maryland's good neighbor provision in its 2008 ozone NAAQS infrastructure SIP submission are not relevant to this present rulemaking action. As stated herein and in the NPR, EPA will take later, separate action on Maryland's 2008 ozone NAAQS infrastructure SIP submission to address section 110(a)(2)(D)(i)(I).

EPA believes the statutory language in the CAA supports our ability to approve Maryland's December 27, 2012 2008 ozone NAAQS infrastructure SIP while taking later, separate action on the portion of the SIP submittal which addresses Maryland's obligation to address section 110(a)(2)(D)(i)(I). 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 the states' 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)).

As such, EPA interprets its authority under section 110(k)(3), as affording EPA the discretion to approve or conditionally approve individual elements of Maryland's infrastructure submission for the 2008 8-hour ozone NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) 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. The commenter raises no compelling legal or environmental rationale for an alternate interpretation. Nothing in the Supreme Court's April 2014 decision in *EME Homer City* alters our interpretation that we may act on individual severable measures including the requirements of section 110(a)(2)(D)(i)(I) in a SIP submission. *See EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014) (affirming a state's obligation to submit a SIP revision addressing section 110(a)(2)(D)(i)(I) independent of EPA's action finding significant contribution or interference with maintenance).

EPA's proposed approval of the Maryland December 27, 2012 infrastructure SIP submission for the 2008 ozone NAAQS for the portions described in the NPR was therefore appropriate.

Comment 8: The commenter indicates that Maryland is not meeting the requirements of CAA section 110(a)(2)(J) and does not meet the requirements of section 127 relating to public notification. The commenter asserts section 127 mandates a SIP contain provisions to effectively notify the public of NAAQS exceedances and provides that the state must advise of health hazards of pollution. The commenter contends Maryland's Environmental Article, section 2-

103.2(b) ensures air monitoring data is available online but does not provide public notification of NAAQS exceedances. Additionally the commenter questions whether the ozone forecasts provided by Maryland online provide information about ozone NAAQS exceedances and says Maryland must revise its infrastructure SIP to ensure compliance with section 110(a)(2)(J).

Response 8: EPA disagrees with the commenter that the Maryland SIP does not meet the requirement of section 110(a)(2)(J) for public notification. In the TSD accompanying the NPR, EPA discussed Environment Article, section 2-103.2(b) of the Annotated Code of Maryland, which requires public access to all air monitoring data online via the internet. By providing information to the public on the internet for 8-hour ozone levels, the State of Maryland provides adequate public notification of ozone levels and provides to the public both in and outside the State of Maryland information that can be used to examine ozone levels and determine when and where exceedances occurred or might occur. The commenter does not explain why this information is not adequate "public notice" of exceedances of the NAAQS. In addition to providing access to the ozone monitor data on the internet, the Maryland SIP contains approved procedures for permitting, attainment planning, and emergency episodes which provide information about the ozone air quality conditions and about the emission controls that may be implemented to reduce ozone levels. Section 2-303(b) of the Environment Article of the Annotated Code of Maryland requires that public hearings be held before Maryland finalizes air quality regulations. In the TSD, EPA also identified other regulatory and statutory provisions in Maryland which address public notification and hearings including COMAR 26.11.02 and 26.11.03 for permits and COMAR 26.11.04.02 which adopts 40 CFR 58.50 for reporting air quality to the public several times per day. In addition, COMAR 26.11.05.02 and 26.11.05.03 provide for public notification when ozone levels may reach or exceed levels considered

injurious to human health. The remaining provisions in COMAR 26.11.05 provide for responsive actions to address such injurious accumulations of air pollution. Maryland provides historical information on exceedances statewide for each calendar year at http://www.mde.state.md.us/programs/Air/AirQualityMonitoring/Pages/HistoricalData.aspx which contains links to a statewide listing of recorded exceedances at specific locations including the Millington monitor in Kent County. Maryland also provides air quality forecasts at http://www.mde.state.md.us/programs/Air/AirQualityMonitoring/Pages/AQForecast.aspx which also includes information on actions the public can take to reduce pollution and protect their health.

As explained in the TSD accompanying the NPR and herein, Maryland's ozone infrastructure SIP submission clearly demonstrates that Maryland regularly notifies the public of instances or areas in which the 2008 ozone NAAQS was exceeded, advises the public of the health hazards associated with such exceedances, and enhances public awareness of measures that can prevent such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality. Thus, EPA believes the Maryland statutory and regulatory provisions discussed previously and in the TSD provide effective methods to provide information and notification to the public when the ozone standard may be or has been exceeded.

V. Final Action

EPA is approving the following infrastructure elements of Maryland's December 27, 2012 SIP revision for the 2008 ozone NAAQS: Section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M) as a revision to the Maryland SIP. 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. This rulemaking action also does not include any action on Section 110(a)(2)(D)(i)(I). EPA will take later separate action on Maryland's December 27, 2012 SIP submission addressing Section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

VI. 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 (Public Law 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 **[Insert date 60 days from date of publication of this document in the Federal Register]**. 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 Maryland, 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, Ozone, Reporting and recordkeeping requirements.

Dated: September 22, 2014.

William 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 V--Maryland

2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for Infrastructure Requirements for the 2008 Ozone NAAQS at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* *	* *		
Infrastructure Requirements for the 2008 Ozone NAAQS	Statewide	12/27/12	[Insert date of Federal Register publication] [Insert Federal Register citation]	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)

[FR Doc. 2014-24256 Filed 10/15/2014 at 8:45 am; Publication Date: 10/16/2014]