6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2014-0744, FRL-9918-05-Region 10]

Approval and Promulgation of Implementation Plans; Washington: Infrastructure Requirements for the Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove the State Implementation Plan (SIP) submittal from Washington demonstrating that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter ($PM_{2.5}$) on July 18, 1997, October 17, 2006, and December 14, 2012 (collectively the $PM_{2.5}$ NAAQS). The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIP to ensure that it meets the infrastructure requirements necessary to implement the new or revised NAAQS. On September 22, 2014, Washington certified that the Washington SIP meets the infrastructure requirements of the CAA for the $PM_{2.5}$ NAAQS, except for those requirements related to the Prevention of Significant Deterioration (PSD) permitting program currently operated under a Federal Implementation Plan (FIP), certain elements of the regional haze program currently operated under a FIP, and specific requirements related to interstate transport which will be addressed in a separate submittal. The EPA is proposing to find that Washington's SIP is adequate for purposes of the infrastructure SIP requirements of the CAA

with the exceptions noted above. The EPA is proposing to find that the SIP deficiencies related to PSD permitting and regional haze, however, have been adequately addressed by the existing EPA FIPs and, therefore, no further action is required by Washington or the EPA for those elements. The EPA will address the remaining interstate transport requirements in a separate action.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2014-0744, by any of the following methods:

- E-mail: R10-Public_Comments@epa.gov
- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Mail: Jeff Hunt, EPA Region 10, Office of Air, Waste and Toxics (AWT-150), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101
- Hand Delivery: EPA Region 10 Mailroom, 9th floor, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Jeff Hunt, Office of Air, Waste and Toxics, AWT - 107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2014-0744. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information

provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which 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. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200

Sixth Avenue, Seattle WA, 98101.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt at: (206) 553-0256, hunt.jeff@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us" or "our" is used, it is intended to refer to the EPA. Information is organized as follows:

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I. Background

On July 18, 1997, the EPA promulgated a new 24-hour and a new annual NAAQS for $PM_{2.5}$ (62 FR 38652). On October 17, 2006, the EPA revised the standards for $PM_{2.5}$, tightening the 24-hour $PM_{2.5}$ standard from 65 micrograms per cubic meter (μ/m^3) to 35 μ/m^3, and retaining the annual $PM_{2.5}$ standard at 15 μ/m^3 (71 FR 61144). Subsequently, on December 14, 2012, the EPA revised the level of the health based (primary) annual $PM_{2.5}$ standard to 12 μ/m^3 (78 FR 3086, published January 15, 2013).[1]

States must submit SIPs meeting the requirements of CAA sections 110(a)(1) and (2) within three years after promulgation of a new or revised standard. CAA sections 110(a)(1) and

[1] In the EPA's 2012 $PM_{2.5}$ NAAQS revision, we left unchanged the existing welfare (secondary) standards for $PM_{2.5}$ to address PM-related effects such as visibility impairment, ecological effects, damage to materials and climate impacts. This includes an annual secondary standard of 15.0 $\mu g/m^3$ and a 24-hour standard of 35 $\mu g/m^3$.

(2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to implement, maintain, and enforce the standards, so-called "infrastructure" requirements. To help states meet this statutory requirement, the EPA issued guidance to states. On October 2, 2007, the EPA issued guidance to address infrastructure SIP elements for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS.[2] Subsequently, on September 25, 2009, the EPA issued guidance to address SIP infrastructure elements for the 2006 24-hour $PM_{2.5}$ NAAQS.[3] Finally, on September 13, 2013, the EPA issued guidance to address infrastructure SIP elements generally for all NAAQS, including the 2012 $PM_{2.5}$ NAAQS.[4] As noted in the guidance documents, to the extent an existing SIP already meets the CAA section 110(a)(2) requirements, states may certify that fact via a letter to the EPA. On September 22, 2014, Washington made a submittal to the EPA certifying that the current Washington SIP meets the CAA section 110(a)(1) and (2) infrastructure requirements for the $PM_{2.5}$ NAAQS, except for certain requirements related to PSD permitting, regional haze, and interstate transport described in the "Analysis of the State's Submittal" section below. Washington's submittal also included a demonstration for infrastructure requirements related to the 2008 ozone and 2010 nitrogen

[2] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards." Memorandum to EPA Air Division Directors, Regions I-X, October 2, 2007.

[3] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)." Memorandum to Regional Air Division Directors, Regions I-X, September 25, 2009.

[4] Stephen D. Page, Director, Office of Air Quality Planning and Standards. "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)." Memorandum to EPA Air Division Directors, Regions 1 – 10, September 13, 2013.

dioxide NAAQS addressed in a separate EPA proposal.

II. CAA Sections 110(a)(1) and (2) Infrastructure Elements

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. CAA section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.[5]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.

[5] Washington's submittal does not address CAA section 110(a)(2)(D)(i)(I). On April 29, 2014, the U.S. Supreme Court reversed and remanded a D.C. Circuit Court ruling related to interstate transport. See *EPA v. EME Homer City Generation, L.P.*, No. 12-1182, 572 U.S. ____ slip op. (2014). The EPA intends to address Washington's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the $PM_{2.5}$ NAAQS in a separate action. In contrast, portions of the Washington SIP submittal relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii) were submitted. In this notice, we are proposing to act on Washington's submittal for purposes of 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii) for the $PM_{2.5}$ NAAQS.

- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

The EPA's guidance clarified that two elements identified in CAA section 110(a)(2) are not governed by the three year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to CAA section 172 and the various pollutant specific subparts 2 – 5 of part D. These requirements are: (i) submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or CAA section 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title I of the CAA are not changed by a

new NAAQS.

III. The EPA's Approach to Review of Infrastructure SIP Submittals

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

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

protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[6] The EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, the EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for the EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while the EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the CAA, which

[6] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

specifically address nonattainment SIP requirements.[7] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires the EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[8] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, the EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether the EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, the EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, the EPA can elect to act on

[7] See, e.g., "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule," 70 FR 25162, at 25163 – 65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[8] The EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

such submissions either individually or in a larger combined action.[9] Similarly, the EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, the EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[10]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, the EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[11]

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[9] See, e.g., "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (the EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of the EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (the EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[10] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to the EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). The EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), the EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[11] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new

The EPA notes that interpretation of section 110(a)(2) is also necessary when the EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, the EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), the EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, the EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way.

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monitors to measure ambient levels of that new indicator species for the new NAAQS.

Therefore, the EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, the EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[12] The EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[13] The EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, the EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. The EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[14] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, the EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, the EPA reviews each infrastructure SIP submission for

[12] The EPA notes, however, that nothing in the CAA requires the EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not the EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[13] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[14] The EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I).

compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, the EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains the EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in the EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, the EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and the EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including greenhouse gases. By contrast, structural PSD program requirements do not include provisions that are not required under the

EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions the EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, the EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, the EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, the EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and the EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while

limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of the EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007). Thus, the EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[15] It is important to note that the EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

The EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. The EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and the EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded

[15] By contrast, the EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then the EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when the EPA evaluates adequacy of the infrastructure SIP submission. The EPA believes that a better approach is for states and the EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, the EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, the EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes the EPA to issue a "SIP call" whenever the EPA determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[16] Section 110(k)(6) authorizes the EPA to correct errors in past

[16] For example, the EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan;

actions, such as past approvals of SIP submissions.[17] Significantly, the EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude the EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, the EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[18]

IV. Analysis of the State's Submittal

110(a)(2)(A): Emission limits and other control measures

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

State submittal: The Washington submittal cites an overview of the air quality laws

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Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[17] The EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). The EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] See, e.g., the EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

including portions of Chapter 70.94 Revised Code of Washington (RCW) *Washington Clean Air Act* and Chapter 43.21A RCW *Department of Ecology*. These underlying statutory authorities remain substantially unchanged since the EPA's last comprehensive review for the 1997 ozone NAAQS infrastructure certification (77 FR 30902, May 24, 2012). The only statutory changes that occurred since the EPA's last review were in 2012, when the Washington State Legislature revised Chapter 70.94 RCW to address the Tacoma-Pierce County $PM_{2.5}$ nonattainment area and other areas at risk for $PM_{2.5}$ nonattainment statewide. These statutory changes allowed state and local agencies to take a more precautionary approach in protecting and maintaining the $PM_{2.5}$ NAAQS with respect to residential wood burning devices and impaired air quality burn bans.

Washington also included an overview of state and local regulations approved into the SIP, codified in 40 CFR part 52, subpart WW. These regulations include minor stationary source permitting, visible emissions requirements, and other basic program elements that apply to all NAAQS reviewed as part of the 1997 ozone NAAQS infrastructure certification. Other cited regulations were developed as part of previous nonattainment area strategies such as open burning restrictions originally promulgated to address coarse particulate matter (PM_{10}) nonattainment, but provide important co-benefits for $PM_{2.5}$. Most notable for the control of $PM_{2.5}$ is the EPA's recent approval of Chapter 173–433 Washington Administrative Code (WAC) *Solid Fuel Burning Devices*, codifying the 2012 statutory changes to Washington's residential wood combustion control program (79 FR 26628, May 9, 2014). Also notable is the EPA's recent approval of Chapter 173–476 WAC *Ambient Air Quality Standards*, mirroring the

Federal $PM_{2.5}$ NAAQS (79 FR 12077, March 4, 2014). These state-wide ambient air quality standards ensure that the general minor stationary source permitting programs codified in 40 CFR part 52, subpart WW, cover the applicable $PM_{2.5}$ NAAQS.

EPA analysis: Washington's $PM_{2.5}$ problems are heavily dominated by residential wood combustion during winter inversion episodes that can last up to several days. As a result, Washington experiences spikes in the 24-hour $PM_{2.5}$ standard during these short-term meteorological conditions, but otherwise has generally low levels of $PM_{2.5}$ for the rest of the year. For example, in the Tacoma-Pierce County $PM_{2.5}$ nonattainment area, emissions are 74% wood smoke, 9% on road motor vehicles, 5% non-road vehicles and engines, and 2% large industry on days when $PM_{2.5}$ NAAQS violations are most likely (78 FR 32131, May 29, 2013). Other communities historically at risk of elevated $PM_{2.5}$ levels such as Darrington, Marysville, and Yakima, also experience heavy influence from residential wood combustion. For this reason, the state-wide revisions to Chapter 173–433 WAC are a major step forward in controlling $PM_{2.5}$ in Washington State. Monitors historically violating or close to violating the $PM_{2.5}$ NAAQS in all four communities are now attaining the standards based on 2011-2013 data.[19] Therefore, we are proposing to approve the Washington SIP as meeting the requirements of CAA section 110(a)(2)(A) for the $PM_{2.5}$ NAAQS.

110(a)(2)(B): Ambient air quality monitoring/data system

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for

[19] Darrington 24-hour design value (DV) = 27 μ/m^3, annual DV = 6.8 μ/m^3; Marysville 24-hour DV = 26 μ/m^3, annual DV = 7.7 μ/m^3; Tacoma 24-hour DV = 32 μ/m^3, annual DV = 7.8 μ/m^3; and Yakima 24-hour DV = 33 μ/m^3, annual DV = 9.1 μ/m^3

establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

State submittal: Washington derives its general statutory authority to establish and operate ambient air quality monitors from RCW 70.94.331(5) *Powers and Duties of Department* which states, "[t]he department is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants and conduct or cause to be conducted a program to determine the quantity of emissions to the atmosphere." Regulatory authority is contained in the EPA-approved SIP provisions of WAC 173-400-105 *Records, Monitoring and Reporting*.

EPA analysis: Washington submitted a comprehensive air quality monitoring plan to meet the requirements of 40 CFR part 58, which the EPA approved on April 15, 1981. This air quality monitoring plan has been updated annually, with the most recent submittal dated May 2013. The EPA approved the plan on March 10, 2014. The letter approving the plan is included in the docket for this action. Most notable is the establishment of a near roadway monitoring site in the Seattle-Tacoma-Bellevue Metropolitan Statistical Area, in accordance with the EPA's most recent ambient monitoring requirements for $PM_{2.5}$ (78 FR 3086, January 15, 2013). Washington provides air quality monitoring data summaries and a map of the state air monitoring network at: https://fortress.wa.gov/ecy/enviwa/Default.htm. Therefore, we are proposing to approve the Washington SIP as meeting the requirements of CAA section 110(a)(2)(B) for the $PM_{2.5}$ NAAQS.

110(a)(2)(C): Program for enforcement of control measures

CAA section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

State submittal: The Washington submittal refers to EPA-approved regulatory provisions contained in the SIP under WAC 173-400-230 *Regulatory Actions* and WAC 173-400-240 *Criminal Penalties*, as well as the enforcement-related statutory provisions of Chapter 70.94 RCW, *Washington Clean Air Act*. All of these enforcement provisions remain unchanged since the EPA's last review and approval of the 1997 ozone infrastructure submittal. Washington also cites the EPA-approved minor source permitting program contained in the SIP under WAC 173-400-110 *New Source Review* and WAC 173-400-113 *Requirements for New Sources in Attainment or Unclassifiable Areas*. Specifically, WAC 173-400-113(3) ensures that, "[a]llowable emissions from the proposed new source or modification will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any ambient air quality standard."[20] Washington also notes that any major PSD sources in attainment or unclassifiable areas would be addressed under the existing EPA FIP codified in 40 CFR 52.2497.

EPA analysis: With regard to the requirement to have a program providing for enforcement of all SIP measures, we are proposing to find that the Washington provisions

[20] On October 3, 2014, following the State's infrastructure submission, the EPA approved updates to portions of WAC 173-400, including regulations related to minor new source review (79 FR 59653). The EPA's final approval of the updates to WAC 173-400 is not effective until November 3, 2014. In the interim, the EPA notes that both the version of WAC 173-400 currently approved in the SIP (effective June 2, 1995) and the recent updates (effective November 3, 2014) provide broad, general authority to maintain and protect the NAAQS.

provide the state with authority to enforce the air quality regulations, permits, and orders promulgated pursuant to the SIP. Washington may issue emergency orders to reduce or discontinue emission of air contaminants where air emissions cause or contribute to imminent and substantial endangerment under the EPA-approved provisions of WAC 173-435 *Emergency Episode Plan*. Enforcement cases may be referred to the State Attorney General's Office for civil or criminal enforcement. Therefore, we are proposing to approve the Washington SIP as meeting the requirements of CAA section 110(a)(2)(C) related to enforcement for the $PM_{2.5}$ NAAQS.

To generally meet the requirements of CAA section 110(a)(2)(C) with regard to the regulation of construction of new or modified stationary sources, a state is required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the $PM_{2.5}$ NAAQS. As explained above, in the "CAA Sections 110(a)(1) and (2) Infrastructure Elements" discussion, we are not evaluating nonattainment related provisions in this action, such as the nonattainment NSR program required by part D, title I of the CAA. With regard to the minor NSR requirement of this element, we have determined that the Washington minor NSR program adopted pursuant to section 110(a)(2)(C) of the CAA, and codified in 40 CFR part 52, subpart WW is adequate to regulate emissions of $PM_{2.5}$. Lastly, as previously discussed, the PSD permitting program in Washington is operated under an EPA FIP. As noted in the EPA's infrastructure guidance, when an area is already subject to a FIP for PSD permitting (whether or not a state, local, or tribal air agency has been delegated Federal authority to implement the PSD

FIP), the air agency may choose to continue to rely on the PSD FIP to have permits issued pursuant to the FIP. If so, the EPA could not fully approve the infrastructure SIP submission; however, the EPA anticipates that there would be no adverse consequences to the air agency or to sources from this partial disapproval of the infrastructure SIP. Therefore, the EPA is proposing to partially disapprove Washington's SIP for those requirements of CAA section 110(a)(2)(C) related to PSD.[21]

110(a)(2)(D)(i): Interstate transport

CAA section 110(a)(2)(D)(i) requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state (CAA section 110(a)(2)(D)(i)(I)). Further, this section requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality, or from interfering with measures required to protect visibility (i.e. measures to address regional haze) in any state (CAA section 110(a)(2)(D)(i)(II)).

State submittal: Washington indicated in the submittal that the State intends to fulfill any remaining requirements related to CAA section 110(a)(2)(D)(i)(I) in a separate submittal. With respect to the CAA section 110(a)(2)(D)(i)(II) requirements, Washington's certification notes that a FIP is in place to address the PSD components. With respect to visibility, Washington

[21] On January 27, 2014, Washington submitted PSD regulations for approval into the SIP. The EPA has not finalized our review of that submittal. The EPA's proposed disapproval of the PSD elements in this action to rely on the existing PSD FIP is not a reflection on Ecology's January 27, 2014, submittal.

submitted a regional haze plan in 2010, which the EPA partially approved, partially disapproved, and supplemented with a FIP (79 FR 33438, June 11, 2014).

EPA analysis: As noted above, this action does not address the requirements of CAA section 110(a)(2)(D)(i)(I). On January 13, 2009, the EPA determined that Washington met the CAA section 110(a)(2)(D)(i)(I) requirements for the 1997 $PM_{2.5}$ NAAQS (74 FR 1501). Washington did not address CAA section 110(a)(2)(D)(i)(I) for the 2006 and 2012 $PM_{2.5}$ NAAQS in the September 22, 2014 submittal. We intend to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 and 2012 $PM_{2.5}$ NAAQS in a separate action.

The EPA believes that the CAA section 110(a)(2)(D)(i)(II) PSD sub-element is satisfied when new major sources and major modifications in Washington are subject to a SIP-approved PSD program that satisfactorily implements the $PM_{2.5}$ NAAQS. As previously noted, a FIP is in place for the PSD program in Washington. Therefore, the EPA is proposing to disapprove the Washington SIP with respect to the CAA section 110(a)(2)(D)(i)(II) PSD sub-element.

The EPA believes that one way the CAA section 110(a)(2)(D)(i)(II) visibility sub-element (prong 4) can be satisfied for any relevant NAAQS is through an air agency's confirmation in its infrastructure SIP submission that it has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. As noted in the EPA's 2013 infrastructure guidance, "[i]f the EPA determines the SIP to be incomplete or partially disapproves an infrastructure SIP submission for prong 4, a FIP obligation will be created. If a FIP or FIPs are already in effect that correct all regional haze SIP deficiencies, there will be no

additional practical consequences from the partial disapproval for the affected air agency, the sources within its jurisdiction, or the EPA. The EPA will not be required to take further action with respect to prong 4 because the FIP already in place would satisfy the requirements with respect to prong 4. In addition, unless the infrastructure SIP submission is required in response to a SIP call under CAA section 110(k)(5), mandatory sanctions under CAA section 179 would not apply because the deficiencies are not with respect to a submission that is required under CAA title I part D. Nevertheless, the EPA continues to encourage all air agencies that may be subject to full or partial FIPs for regional haze requirements to consider adopting additional SIP provisions that would allow the EPA to fully approve the regional haze SIP and thus to withdraw the FIP and approve the infrastructure SIP with respect to prong 4." Because a partial FIP is currently in place to address regional haze impacts from direct $PM_{2.5}$ and $PM_{2.5}$ precursors, the EPA is proposing to disapprove the Washington SIP with respect to the CAA section 110(a)(2)(D)(i)(II) visibility sub-element for the $PM_{2.5}$ NAAQS.

110(a)(2)(D)(ii) Interstate and International transport provisions: CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

State submittal: Washington's submittal notes that the state has no pending obligations under section 115 or 126(b) of the CAA. CAA section 126(a) obligations are met through the

current PSD FIP.

EPA analysis: The EPA agrees that Washington has no pending interstate or international pollution obligations under CAA sections 115 and 126(b). Because Washington does not have SIP-approved provisions addressing the requirements and instead relies on the PSD FIP to satisfy its CAA section 126(a) obligations, the EPA is proposing to partially disapprove the SIP for this element. However, as previously noted, the EPA anticipates that there would be no adverse consequences to Washington or to sources resulting from this proposed partial disapproval of the infrastructure SIP.

110(a)(2)(E): Adequate resources

CAA section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under CAA section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

State submittal: Chapter 43.21A RCW *Department of Ecology* provides authority for the director to employ personnel necessary for administration of this chapter. Chapters 43.21A and 70.94 RCW provide the rule-making authority for Ecology. Ecology's Air Quality Program is funded through the following funding sources: the state general fund, section 105 of the CAA

grant program, Air Operating Permit Account (permit fees from large industrial sources), and Air Pollution Control Account (permit fees for burning and annual fees for small industrial air pollution sources).

The EPA-approved provisions of the Washington SIP under WACs 173-400-220 *Requirements for Board Members* and 173-400-260 *Conflict of Interest* provide that no state board or body which approves operating permits or enforcement orders, either in the first instance or upon appeal, shall be constituted of less than a majority of members who represent the public interest and who do not derive a significant portion of their income from persons subject to operating permits. State law also provides that any potential conflicts of interest by members of such board or body or the head of any executive agency with similar powers be adequately disclosed. See RCW 34.05.425 *Administrative Procedure Act*; RCW 42.17 *Public Disclosure Act*; RCW 70.94.100 *Composition of Local Air Authorities' Board; Conflict of Interest Requirements*.

Ecology works with other organizations and agencies and may enter into agreements allowing for implementation of the air pollution controls by another agency. However, RCW 70.94.370 states that no provision of this chapter or any recommendation of the state board or of any local or regional air pollution program is a limitation on the power of a state agency in the enforcement, or administration of any provision of law which it is specifically permitted or required to enforce or administer.

EPA analysis: Regarding adequate personnel, funding and authority, the EPA believes

the Washington SIP meets the requirements of this element. Washington receives CAA sections 103 and 105 grant funds from the EPA and provides state matching funds necessary to carry out SIP requirements. Regarding the state board requirements under CAA section 128, the EPA approved WAC 173-400-220 *Requirements for Board Members* and WAC 173-400-260 *Conflict of Interest* as meeting the section 128 requirements on June 2, 1995 (60 FR 28726). On May 24, 2012, the EPA approved the Washington SIP as meeting the requirements of sub-element 110(a)(2)(E)(ii) (77 FR 30902). Finally, regarding state responsibility and oversight of local and regional entities, RCW 70.94.370 provides Ecology with adequate authority to carry out oversight of SIP obligations. Therefore, the EPA is proposing to approve the Washington SIP as meeting the requirements of CAA section 110(a)(2)(E) for the $PM_{2.5}$ NAAQS**.**

110(a)(2)(F): Stationary source monitoring system

CAA section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which shall be available at reasonable times for public inspection.

State submittal: The EPA-approved version of WAC 173-400-105 *Records, Monitoring, and Reporting* currently in the Washington SIP provides the authority to monitor stationary source emissions for compliance purposes and make the information available to the public. The

language of WAC 173-400-105(1) provides general authority to require emission reporting. Meanwhile, WAC 173-400-105(2) allows Ecology to require stack testing and/or ambient air monitoring, even if not required in a permit or other enforceable requirement as part of a continuous surveillance program to protect air quality.

EPA analysis: The EPA-approved regulatory provisions cited by Washington establish compliance requirements to monitor emissions, keep and report records, and collect ambient air monitoring data in accordance with CAA section 110(a)(2)(F). Additionally, Washington is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors – nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website http://www.epa.gov/ttn/chief/eiinformation.html.

Based on the analysis above, we are proposing to approve the Washington SIP as meeting the requirements of CAA section 110(a)(2)(F) for the $PM_{2.5}$ NAAQS.

110(a)(2)(G): Emergency episodes

CAA section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including adequate contingency plans to implement the emergency episode provisions in their SIPs.

State submittal: Ecology cites the EPA-approved Washington SIP provisions of WAC 173-435 *Emergency Episode Plan*, which are consistent with the EPA's regulations contained in 40 CFR part 51, subpart H (51.150-51.153). In the case of an imminent danger to public health and safety, for example wildfires, Washington State can use the above mentioned regulatory authorities, and the statutory authorities of RCW 70.94.710 through 70.94.730, to declare an air pollution emergency for $PM_{2.5}$, working closely with other agencies to alert the public and take necessary steps to mitigate risk.

EPA analysis: Section 303 of the CAA provides authority to the EPA Administrator to restrain any source from causing or contributing to emissions which present an "imminent and substantial endangerment to public health or welfare, or the environment." We find that the EPA-approved Washington SIP at WAC 173-435-050 *Action Procedures* provides Washington with comparable authority. Specifically, WAC 173-435-050(6) states, "[r]egardless of whether any episode stages have previously been declared, whenever the governor finds that emissions are causing imminent danger to public health or safety, the governor may declare an air pollution emergency and order the persons responsible for the operation of sources causing the danger, to reduce or discontinue emissions consistent with good operating practice, safe operating procedures, and SERPs [source emission reduction plans], if any." Further, WAC 173-435-

050(5) requires, "[t]he broadest publicity practicable shall be given to the declaration of any episode stage. Such declaration shall, as soon as possible, be directly communicated to all persons responsible for the carrying out of SERPs within the affected area." Accordingly, we are proposing to approve the Washington SIP as meeting the requirements of CAA section 110(a)(2)(G) for the $PM_{2.5}$ NAAQS.

110(a)(2)(H): Future SIP Revisions

CAA section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements, or to otherwise comply with any additional requirements under the CAA.

State submittal: Washington's submittal refers to RCW 70.94, which gives Ecology the authority to promulgate rules and regulations to maintain and protect Washington's air quality and to comply with Federal requirements, including revisions of NAAQS, SIPs, and responding to EPA findings.

EPA analysis: RCW 70.94.510 specifically requires Ecology to cooperate with the Federal government in order to ensure the coordination of the provisions of the Federal Clean Air Act and the Washington Clean Air Act. In practice, Ecology regularly submits revisions to

the EPA to revise the SIP. The EPA recently approved revisions to the Washington SIP on October 3, 2013 (78 FR 61188, Thurston County Second 10-Year PM_{10} Limited Maintenance Plan), September 17, 2013 (78 FR 57073, Puget Sound Clean Air Agency Regulatory Updates), and May 29, 2013 (78 FR 32131, Tacoma-Pierce County Nonattainment Area), as well as the $PM_{2.5}$ related rule revisions cited in the discussion of CAA section 110(a)(2)(A) (79 FR 12077, March 4, 2014). Accordingly, we are proposing to approve the Washington SIP as meeting the requirements of CAA section 110(a)(2)(H) for the $PM_{2.5}$ NAAQS.

110(a)(2)(I): Nonattainment area plan revision under part D

There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but are rather due at the time of the nonattainment area plan requirements pursuant to section 172 and the various pollutant specific subparts 2 – 5 of part D. These elements are: (i) submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

110(a)(2)(J): Consultation with government officials

CAA section 110(a)(2)(J) requires states to provide a process for consultation with local

governments and Federal land managers carrying out NAAQS implementation requirements pursuant to section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

State submittal: Ecology's submittal cites the following regulatory provisions contained in the Washington SIP to meet CAA section 110(a)(2)(J) obligations: WAC 173-435-050 *Action Procedures,* WAC 173-400-151 *Retrofit Requirements for Visibility*, and WAC 173-400-171 *Public Involvement.* Washington also cites the following statutory authorities: RCW 34.05 *Administrative Procedures Act,* RCW 42.30 *Open Public Meetings*, RCW 70.94.141 *Consultation*, and RCW 70.94.240 *Air Pollution Control Advisory Council*. In addition to these SIP measures, Ecology uses the Washington Air Quality Advisory (WAQA) tool for informing the public about the levels and health effects of air pollution. The public can access up-to-date WAQA information on-line at https://fortress.wa.gov/ecy/enviwa/Default.htm.

EPA analysis: Under the EPA-approved provisions of WAC 173-400-171 *Public Involvement*, Ecology routinely coordinates with local governments, states, Federal land managers and other stakeholders on air quality issues and provides notice to appropriate agencies related to permitting actions. Washington regularly participates in regional planning processes including the Western Regional Air Partnership, which is a voluntary partnership of states, tribes,

Federal land managers, local air agencies and the EPA, whose purpose is to understand current and evolving regional air quality issues in the West. Therefore the EPA is proposing to approve the Washington SIP as meeting the requirements of CAA Section 110(a)(2)(J) for consultation with government officials.

Section 110(a)(2)(J) also requires the public be notified if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Washington actively participates and submits information to the EPA's AIRNOW program which provides information to the public on the air quality in their locale. In addition, Washington provides the state's annual network monitoring plan, annual air quality monitoring data summaries, specific warnings and advice to those persons who may be most susceptible, and a map of the state air monitoring network to the public on their website (http://www.ecy.wa.gov/programs/air/airhome.html). Therefore, we are proposing to find that the Washington SIP meets the requirements of CAA section 110(a)(2)(J) for public notification for the $PM_{2.5}$ NAAQS.

Turning to the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) with respect to PSD permitting. As discussed previously, PSD in Washington is operated under a FIP. We are proposing to disapprove the Washington SIP for the requirements of CAA 110(a)(2)(J) with regard to PSD. Instead the state and the EPA will continue to rely on the existing PSD FIP.

With regard to the applicable requirements for visibility protection, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we are proposing to approve the Washington SIP as meeting the requirements of CAA section 110(a)(2)(J) for the $PM_{2.5}$ NAAQS, except for those elements related to PSD which we are proposing to partially disapprove.

110(a)(2)(K): Air quality and modeling/data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

State submittal: The Washington submittal states that air quality modeling is conducted during development of revisions to the SIP, as appropriate to demonstrate attainment with required air quality standards. Modeling is also addressed in the permitting process (see discussion at CAA section 110(a)(2)(C)). Estimates of ambient concentrations are based on air quality models, data bases and other requirements specified in 40 CFR part 51, Appendix W

(Guidelines on Air Quality Models) and are routinely used by Washington. Exceptions to using Appendix W are handled under the provisions of 40 CFR 51.166 (Prevention of significant deterioration of air quality) which requires written approval from the EPA and an opportunity for public comment.

EPA analysis: As noted in Ecology's submittal, Washington models estimates of ambient concentrations based on 40 CFR part 51, Appendix W (Guidelines on Air Quality Models) for both permitting and SIP development. Any change or substitution from models specified in 40 CFR part 51, Appendix W is subject to notice and opportunity for public comment. Modeling was used for development of maintenance plans and redesignation to attainment requests for the former ozone nonattainment areas of Puget Sound and Vancouver, approved by the EPA on September 26, 1996 (61 FR 50438) and May 19, 1997 (62 FR 27204), respectively. More recently, modeling was used to develop control measures for the Tacoma-Pierce County fine particulate matter nonattainment area, although the area came into attainment before a formal SIP submission was required (78 FR 32131, May 29, 2013). Based on the foregoing, we are proposing to approve Washington's SIP as meeting the requirements of CAA Section 110(a)(2)(K) for the $PM_{2.5}$ NAAQS.

110(a)(2)(L): Permitting fees

CAA section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees sufficient to cover the reasonable cost of reviewing, acting upon, implementing and enforcing a permit.

State submittal: Washington derives its authority to collect fees for New Source Review and title V sources from RCW 70.94.151, RCW 70.94.152, and RCW 70.94.162. The EPA reviewed Washington's fee provisions and fully approved the title V program on August 13, 2001 (66 FR 42439), with a revision approved on January 2, 2003 (67 FR 71479). In January 2014, Ecology submitted SIP revisions to Chapter 173-400 WAC that specify that sources applying for permits are required to pay the fees. For example, WAC 173-400-111(1)(e) that describes requirements for the Notice of Construction permits, states that "[a]n application is not complete until any permit application fee required by the permitting authority has been paid." WAC 173-400-560(4)(c), describing general order of approval requirements, states that "[a]n application shall be incomplete until a permitting authority has received any required fees." In addition to the SIP updates that were submitted by Ecology in January, Ecology is proposing to include the following new language in the SIP found under WAC 173-400-111(3)(i): "[a]ll fees required under chapter 173-455 WAC (or the applicable new source review fee table of the local air pollution control authority) have been paid." This language asserts permitting authorities' fee requirements. By including this new language in the SIP, Ecology does not propose to incorporate the referenced chapter 173-455 WAC in the SIP.

EPA analysis: The EPA approved the Washington title V permitting program on August 13, 2001, with an effective date of September 12, 2001 (66 FR 42439). With respect to New Source Review, the EPA finalized approval of Ecology's update to WAC 173-400-111 in the SIP on October 3, 2014 (79 FR 59653). In this action, the EPA is proposing to approve WAC 173-

400-111(3)(i) submitted by Ecology on September 22, 2014. With the proposed inclusion of WAC 173-400-111(3)(i) in the SIP, the EPA is proposing to conclude that Washington will satisfy its obligations under CAA section 110(a)(2)(L) for the $PM_{2.5}$ NAAQS.

110(a)(2)(M): Consultation/participation by affected local entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

State submittal: Washington cites the following regulations and statutes as pertinent to this infrastructure SIP requirement: WAC 173-400-171 *Public Involvement*, RCW 34.05 *Administrative Procedure Act*, RCW 42.30 *Open Public Meetings Act*, and RCW 70.94.240 *Air Pollution Control Advisory Council*.

EPA analysis: As discussed in the preamble relating to CAA section 110(a)(2)(J), Ecology routinely coordinates with local governments and other stakeholders on air quality issues. The public involvement regulations cited in Washington's submittal were previously approved into Washington's Federally-approved SIP on June 2, 1995 (60 FR 28726). Therefore, the EPA proposes to find that Washington's SIP meets the requirements of CAA Section 110(a)(2)(M) for $PM_{2.5}$ NAAQS.

VI. Proposed Action

The EPA is proposing to partially approve and partially disapprove the September 22, 2014, submittal from Washington to demonstrate that the SIP meets the requirements of sections 110(a)(1) and (2) of the CAA for the $PM_{2.5}$ NAAQS promulgated in 1997, 2006, and 2012.

Specifically, we are proposing to find that the current EPA-approved Washington SIP meets the following CAA section 110(a)(2) infrastructure elements for the 1997, 2006 and 2012 $PM_{2.5}$ NAAQS: (A), (B), (C) - except for those elements covered by the PSD FIP, (D)(i)(II) (prong 4) – except for those elements covered by the regional haze FIP, (D)(ii) – except for those elements covered by the PSD FIP, (E), (F), (G), (H), (J) - except for those elements covered by the PSD FIP, (K), (L), and (M). We are also proposing inclusion of WAC 173-400-111(3)(i) in the SIP with respect to the CAA section 110(a)(2)(L) requirements. As previously noted, the EPA anticipates that there would be no adverse consequences to Washington or to sources in the State resulting from this proposed partial disapproval of the infrastructure SIP with respect to the PSD and regional haze FIPs. The EPA, likewise, anticipates no additional FIP responsibilities for PSD and regional haze as a result of this proposed partial disapproval. Interstate transport requirements with respect to CAA section 110(a)(2)(D)(i)(I) for the 2006 and 2012 $PM_{2.5}$ NAAQS will be addressed in a separate action.

VII. Statutory and Executive Order Reviews

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

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989,* 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated September 3, 2013. The EPA did not receive a request for consultation.

List of Subjects in 40 CFR Part 52

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

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

Dated: October 8, 2014

Dennis J. McLerran,

Regional Administrator,
Region 10.

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