6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2014-0429; FRL–9951-16-Region 4]

Air Plan Approval; SC; Infrastructure Requirements for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on December 18, 2015, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. SC DHEC certified that the South Carolina SIP contains provisions that ensure the 2012 Annual $PM_{2.5}$ NAAQS is implemented, enforced, and maintained in South Carolina. EPA is proposing to determine that portions of South Carolina's infrastructure submission, submitted to EPA on December 18, 2015, satisfy certain required infrastructure elements for the 2012 Annual $PM_{2.5}$ NAAQS.

DATES: Written 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-R04-OAR-2014-

0429 at http://www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bell can be reached via electronic mail at bell.tiereny@epa.gov or via telephone at (404) 562-9088.

I. Background and Overview

On December 14, 2012 (78 FR 3086, January 15, 2013), EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter ($\mu g/m^3$) to 12.0 $\mu g/m^3$. Pursuant to section 110(a)(1) of the CAA, States are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe.

Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2012 Annual $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015.[1]

This rulemaking is proposing to approve portions of South Carolina's $PM_{2.5}$ infrastructure SIP submissions[2] for the applicable requirements of the 2012 Annual $PM_{2.5}$ NAAQS, with the exception of the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), for which EPA is not proposing any action in this rulemaking regarding these requirements. For the aspects of South Carolina's submittal proposed for approval in this rulemaking, EPA notes that the Agency is not approving any specific rule, but rather proposing that South Carolina's already approved SIP meets certain CAA requirements.

II. What Elements are Required Under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state

[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term "South Carolina Air Pollution Control Regulation" or "Regulation" indicates that the cited regulation has been approved into South Carolina's federally-approved SIP. The term "South Carolina statute" indicates cited South Carolina state statutes, which are not a part of the SIP unless otherwise indicated.

[2] South Carolina's 2012 Annual $PM_{2.5}$ NAAQS infrastructure SIP submission dated December 18, 2015, is referred to as "South Carolina's $PM_{2.5}$ infrastructure SIP" in this action.

develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for the "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned previously, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are summarized later on and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."[3]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[4]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution

[3] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of 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 due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by 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 (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[4] This rulemaking only addresses requirements for this element as they relate to attainment areas.

- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[5]
- 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 and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's Approach to the Review of Infrastructure SIP Submissions?

EPA is acting upon the SIP submission from South Carolina that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 Annual $PM_{2.5}$ NAAQS**.** The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than

[5] As mentioned previously, this element is not relevant to this proposed rulemaking.

promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

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

[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.

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 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 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 Act, which 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 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, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

[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] 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.

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 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, 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, EPA can elect to act on such submissions either individually or in a larger combined action.[9] Similarly, 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, 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, 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

[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) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of 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) (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 EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). 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), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

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 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]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, 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), 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, EPA assumes that Congress could not have intended that each and every SIP

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

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. Therefore, 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, 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] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[13] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, 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. 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

[12] EPA notes, however, that nothing in the CAA requires 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 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] 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). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations. On March 17, 2016, EPA released a memorandum titled, "Information on the Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)" to provide guidance to states for interstate transport requirements specific to the $PM_{2.5}$ NAAQS.

the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, 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, EPA reviews each infrastructure SIP submission for 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, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains 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 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, 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 EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHGs).

By contrast, structural PSD program requirements do not include provisions that are not required under 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 Annual $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, among other things, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, 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, 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 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 EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR

Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, 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 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.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. 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 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 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 EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of

[15] By contrast, 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 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.

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, 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, 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 EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's implementation plan 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 EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential

[16] For example, 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; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[17] 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). 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).

existing SIP deficiencies does not preclude 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, 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. What is EPA's Analysis of How South Carolina Addressed the Elements of the Sections 110(a)(1) and (2) "Infrastructure" Provisions?

South Carolina's December 18, 2015, infrastructure SIP submission addresses the provisions of sections 110(a)(1) and (2) as described later in this preamble.

1. 110(a)(2)(A): ***Emission Limits and Other Control Measures:*** Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations 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. Several regulations within South Carolina's SIP are relevant to air quality control regulations. The regulations described later have been federally-approved in the South Carolina SIP and include enforceable emission limitations and other control measures. Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards* and Regulation 61-62.1, *Definitions and General Requirements*, provide enforceable

[18] *See, e.g.*, 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).

emission limits and other control measures, means, and techniques. Section 48-1-50(23) of the 1976 South Carolina Code of Laws, as amended, (S.C. Code Ann.) provides SC DHEC with the authority to "Adopt emission and effluent control regulations standards and limitations that are applicable to the entire state, that are applicable only within specified areas or zones of the state, or that are applicable only when a specified class of pollutant is present." Collectively these regulations establish enforceable emissions limitations and other control measures, means or techniques, for activities that contribute to $PM_{2.5}$ concentrations in the ambient air and provide authority for SC DHEC to establish such limits and measures as well as schedules for compliance to meet the applicable requirements of the CAA. EPA has made the preliminary determination that the provisions contained in these State regulations and State statute are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance to satisfy the requirements of Section 110(a)(2(A) for the 2012 Annual $PM_{2.5}$ NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during start up, shut down and malfunction (SSM) operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[19]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a

[19] On June 12, 2015, EPA published a final action entitled, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction." *See* 80 FR 33840.

number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) ***Ambient Air Quality Monitoring/Data System:*** Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. South Carolina's Air Pollution Control Regulations, Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, along with the *South Carolina Network Description and Ambient Air Network Monitoring Plan*, provide for an ambient air quality monitoring system in the State. S.C. Code Ann. § 48-1-50(14) provides the Department with the necessary authority to "[c]ollect and disseminate information on air and water control." Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[20] On July 20, 2015, South Carolina submitted its plan to EPA. On November 19, 2015, EPA approved South Carolina's monitoring network plan. South Carolina's approved monitoring network plan can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-

[20] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

2014-0429. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for the ambient air quality monitoring and data system requirements related to the 2012 Annual $PM_{2.5}$ NAAQS.

3. 110(a)(2)(C) ***Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:*** This element consists of three sub-elements: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (i.e., the major source PSD program). These requirements are met through Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, and Regulation 61-62.5, Standard No. 7.1, *Nonattainment New Source Review*, and 61-62.1, Section II, *Permit Requirements*, of South Carolina's SIP, which pertain to the construction of any new major stationary source or any modification at an existing major stationary source in an area designated as attainment or unclassifiable. These regulations enable SC DHEC to regulate sources contributing to the 2012 Annual $PM_{2.5}$ NAAQS.

Enforcement: SC DHEC's above-described, SIP-approved regulations provide for enforcement of $PM_{2.5}$ emission limits and control measures through construction permitting for new or modified stationary sources. South Carolina cites to statute 48-1-50(11), which provides SC DHEC the authority to administer penalties for violations of any order, permit, regulation or standards; and 48-1-50(10), which authorizes SCDHEC to require and approve construction plans for sources and inspect the construction thereof for compliance with the approved plan. Additionally, SCDHEC is authorized under 48-1-50(3) and (4) to issue orders requiring the

discontinuance of the discharge of air contaminants into the ambient air that create an undesirable level, and seek an injunction to compel compliance with the Pollution Control Act and permits, permit conditions and orders.

PSD Permitting for Major Sources: EPA interprets the PSD sub-element to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the structural PSD requirements for all regulated NSR pollutants. A state's PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all structural PSD requirements that are due under the EPA regulations or the CAA on or before the date of the EPA's proposed action on the infrastructure SIP submission.

For the 2012 Annual $PM_{2.5}$ NAAQS, South Carolina's authority to regulate new and modified sources to assist in the protection of air quality in South Carolina is established in Regulations 61-62.1, Section II, *Permit Requirements*; 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* of South Carolina's SIP. These regulations pertain to the construction of any new major stationary source or any modification at an existing major stationary source in an area designated as attainment or unclassifiable. South Carolina also cites to 61-62.5, Standard No. 7.1, *Nonattainment New Source Review*. South Carolina's infrastructure SIP submission demonstrates that new major sources and major modifications in areas of the State designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD

permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements.[21]

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source preconstruction program that regulates emissions of the 2012 Annual $PM_{2.5}$ NAAQS. Regulation 61-62.1, Section II, *Permit Requirements* governs the preconstruction permitting of minor modifications and construction of minor stationary sources in South Carolina.

EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for enforcement of control measures, PSD permitting for major sources, and regulation of minor sources and modifications related to the 2012 Annual $PM_{2.5}$ NAAQS.

4. 110(a)(2)(D)(i)(I) and (II): ***Interstate Pollution Transport:*** Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent

[21] More information concerning how the South Carolina infrastructure SIP submission currently meets applicable requirements for the PSD elements (110(a)(2)(C); (D)(i)(I), prong 3; and (J)) can be found in the technical support document in the docket for this rulemaking.

significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4").

110(a)(2)(D)(i)(I) – prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will consider these requirements in relation to South Carolina's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II) – prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to: a PSD program meeting all the current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) a NNSR program. As discussed in more detail previously under section 110(a)(2)(C), South Carolina's SIP contains provisions for the State's PSD program that reflect the required structural PSD requirements to satisfy the requirement of prong 3 and a NNSR program at 61-62.5, Standard No. 7.1, *Nonattainment New Source Review*. EPA has made the preliminary determination that South Carolina's SIP is adequate for interstate transport for PSD permitting of major sources and major modifications related to the 2012 Annual $PM_{2.5}$ NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

110(a)(2)(D)(i)(II) – prong 4: EPA is not proposing any action in this rulemaking related to provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong

4) and will consider these requirements in relation to South Carolina's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

5. 110(a)(2)(D)(ii): ***Interstate Pollution Abatement and International Air Pollution:*** Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Regulation 61-62.5, Standards 7 and 7.1 (q)(2)(iv), *Public Participation*, requires SC DHEC to notify air agencies "whose lands may be affected by emissions" from each new or modified major source if such emissions may significantly contribute to levels of pollution in excess of a NAAQS in any air quality control region outside of South Carolina. Additionally, South Carolina does not have any pending obligation under section 115 and 126 of the CAA. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2012 Annual $PM_{2.5}$ NAAQS.

6. 110(a)(2)(E) ***Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:*** Section 110(a)(2)(E) requires that each implementation plan provide: (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve South Carolina's SIP as meeting the requirements of section 110(a)(2)(E). EPA's

rationale for this proposal respecting each requirement of section 110(a)(2)(E) is described in turn later in this preamble.

With respect to section 110(a)(2)(E)(i) and (iii), SC DHEC develops, implements and enforces EPA-approved SIP provisions in the State. S.C. Code Ann. Section 48, Title 1, as referenced in South Carolina's infrastructure SIP submission, provides the SC DHEC's general legal authority to establish a SIP and implement related plans. In particular, S.C. Code Ann. Section 48-1-50(12) grants SC DHEC the statutory authority to "[a]ccept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; [and to] accept, receive and receipt for federal money given by the Federal government under any Federal law to the State of South Carolina for air or water control activities, surveys or programs." S.C. Code Ann. Section 48, Title 2 grants SC DHEC statutory authority to establish environmental protection funds, which provide resources for SC DHEC to carry out its obligations under the CAA. Specifically, in Regulation 61-30, *Environmental Protection Fees*, SC DHEC established fees for sources subject to air permitting programs. SC DHEC implements the SIP in accordance with the provisions of S.C. Code Ann § 1-23-40 (the Administrative Procedures Act) and S.C. Code Ann. Section 48, Title 1. For Section 110(a)(2)(E)(iii), the submission states that South Carolina does not rely on localities for specific SIP implementation.

The requirements of 110(a)(2)(E)(i) and (iii) are further confirmed when EPA performs a completeness determination for each SIP submittal. This provides additional assurances that each submittal includes information addressing the adequacy of personnel, funding, and legal authority under State law used to carry out the State's implementation plan and related issues.

This information is included in all prehearings and final SIP submittal packages for approval by EPA.

As evidence of the adequacy of SC DHEC's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to South Carolina on April 19, 2016, outlining 105 grant commitments and the current status of these commitments for fiscal year 2015. The letter EPA submitted to South Carolina can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2014-0429. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2015, therefore, SC DHEC's grants were finalized and closed out.

Section 110(a)(2)(E)(ii) requires that states comply with section 128 of the CAA. Section 128 of the CAA requires that states include provisions in their SIP to address conflicts of interest for state boards or bodies that oversee CAA permits and enforcement orders and disclosure of conflict of interest requirements. Specifically, CAA section 128(a)(1) necessitates that each SIP shall require that at least a majority of any board or body which approves permits or enforcement orders shall be subject to the described public interest service and income restrictions therein. Subsection 128(a)(2) requires that the members of any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements.

With respect to 110(a)(2)(E)(ii), South Carolina satisfies the requirements of CAA section 128(a)(1) for the South Carolina Board of Health and Environmental Control, which is the "board or body which approves permits and enforcement orders" under the CAA in South Carolina, through S.C. Code Ann. Section 8-13-730. S.C. Code Ann. Section 8-13-730 provides

that "[u]nless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates business with which that person is associated," and S.C. Code Ann. Section 8-13-700(A) which provides in part that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." S.C. Code Ann. Section 8-13-700(B)(1)-(5) provides for disclosure of any conflicts of interest by public official, public member or public employee, which meets the requirement of CAA Section 128(a)(2) that "any potential conflicts of interest ... be adequately disclosed." These State statutes - S.C. Code Ann. Sections 8-13-730, 8-13-700(A), and 8-13-700(B)(1)-(5) - have been approved into the South Carolina SIP as required by CAA section 128.

EPA has made the preliminary determination that South Carolina has satisfied the requirements of 110(a)(2)(E) for implementation of the 2012 Annual $PM_{2.5}$ NAAQS.

7. 110(a)(2)(F) ***Stationary Source Monitoring and Reporting*****:** Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing (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 this section, which reports shall be available at reasonable times for public inspection. SC DHEC's infrastructure SIP submission describes the establishment of requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. SC DHEC uses these data to

track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. These SIP requirements are codified at Regulation 61-62.1, *Definitions and General Requirements*, which provides for emission inventories and other emission monitoring and reporting requirements for stationary sources. R. 61-62.1, Section III, *Emission Inventory*, provides for an emission inventory plan that establishes reporting requirements for various pollutants from permitted facilities on annual or three year cycles, depending on emission levels and nonattainment area status. Further, S.C. Code Ann. § 48-1-22 provides the Department with the necessary authority to "Require the owner of operator of any source or disposal system to establish and maintain such operational records; make reports; install, use and maintain monitoring equipment or methods; samples and analyze emissions or discharges in accordance with prescribed methods, at locations, intervals, and procedures as the Department shall prescribe; and provide such other information as the Department reasonably may require." Finally, R. 61-62.1, Section V, *Credible Evidence*, specifies that non-reference test data and other information already available and utilized for other purposes may be used to demonstrate compliance or noncompliance with emission standards. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the South Carolina SIP.

Additionally, South Carolina is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. 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). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive

emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors – NOx, SO_2, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. South Carolina made its latest update to the 2011 NEI on April 8, 2014. 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. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for the stationary source monitoring systems related to the Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G) ***Emergency Powers:*** This section of the Act requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Regulation 61-62.3, *Air Pollution Episodes*, provides for contingency measures when an air pollution episode or exceedance may lead to a substantial threat to the health of persons in the state or region. S.C. Code Ann. Section 48-1-290 provides SC DHEC, with concurrent notice to the Governor, the authority to issue an order recognizing the existence of an emergency requiring immediate action as deemed necessary by SC DHEC to protect the public health or property. Any person subject to this order is required to comply immediately. Additionally, S.C. Code Ann. Section 1-23-130 provides SC DHEC with the authority to establish emergency regulations to address an imminent peril to public health, or welfare, and authorizes emergency regulations to protect natural resources if any natural resource related

agency in the State finds that abnormal or unusual conditions, immediate need, or the State's best interest require such emergency action. EPA has made the preliminary determination that South Carolina's SIP, State laws, and practices are adequate for emergency powers related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) ***SIP Revisions:*** Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) 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) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. SC DHEC is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in South Carolina. The State has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. S.C. Code Ann. Section 48, Title 1, provides SC DHEC with the necessary authority to revise the SIP to accommodate changes in the NAAQS and thus revise the SIP as appropriate. EPA has made the preliminary determination that South Carolina adequately demonstrates a commitment to provide future SIP revisions related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) ***Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:*** EPA is proposing to approve South Carolina's infrastructure SIP

submission for the 2012 Annual $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, the public notification requirements of section 127, PSD and visibility protection. EPA's rationale for each sub-element is described later in this preamble.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, as well as the State's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLM), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. South Carolina has SIP-approved state-wide consultation procedures for the implementation of transportation conformity (*see* 69 FR 4245). Implementation of transportation conformity as outlined in the consultation procedures requires SC DHEC to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. Additionally, S.C. Code Section 48-1-50(8) provides SC DHEC with the necessary authority to "Cooperate with the governments of the United States or other states or state agencies or organizations, official or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements." EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate consultation with government officials related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly,

EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(J) consultation with government officials.

Public notification (127 public notification): Regulation 61-62.3, *Air Pollution Episodes*, requires that SC DHEC notify the public of any air pollution episode or NAAQS violation. S.C. Code Ann. § 48-1-60 establishes that "Classification and standards of quality and purity of the environment [are] authorized after notice and hearing." Additionally, Regulation 61-62.5, Standard 7.1 (q), *Public Participation*, notifies the public by advertisement in a newspaper of general circulation in each region in which a proposed plant or modifications will be constructed of the degree of increment consumption that is expected from the plant or modification, and the opportunity for comment at a public hearing as well as the opportunity to provide written public comment. An opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the plant or modification, alternatives to the plant or modification, the control technology required, and other appropriate considerations is also offered.

EPA also notes that SC DHEC maintains a website that provides the public with notice of the health hazards associated with $PM_{2.5}$ NAAQS exceedances, measures the public can take to help prevent such exceedances, and the ways in which the public can participate in the regulatory process. See http://www.scdhec.gov/HomeAndEnvironment/Air/MostCommonPollutants/ParticulateMatter/. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

PSD: With regard to the PSD element of section 110(a)(2)(J), this requirement is be met by a state's confirmation in an infrastructure SIP submission that the state has a SIP-approved PSD program meeting all the current structural requirements of part C of title I of the CAA for all NSR regulated pollutants. As discussed in more detail previously under the section discussing 110(a)(2)(C), South Carolina's SIP contains provisions for the State's PSD program that reflect required structural PSD requirements to satisfy the PSD element of section 110(a)(2)(J). EPA has made the preliminary determination that South Carolina's SIP is adequate for PSD permitting of major sources and major modifications for the PSD element of section 110(a)(2)(J).

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. SC DHEC referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so SC DHEC does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that South Carolina's infrastructure SIP submission related to the 2012 Annual $PM_{2.5}$ NAAQS is approvable for the visibility protection element of section 110(a)(2)(J) and that South Carolina does not need to rely on its regional haze program.

11. 110(a)(2)(K) ***Air Quality Modeling and Submission of Modeling Data:*** Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. Regulations 61-62.5, Standard No. 2, *Ambient Air Quality Standards*, and Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, of the South Carolina SIP specify that required air modeling be conducted in accordance with 40 CFR part 51, Appendix W, *Guideline on Air Quality Models*, as incorporated into the South Carolina SIP. Also, S.C. Code Ann. § 48-1-50(14) provides SC DHEC with the necessary authority to "Collect and disseminate information on air and water control." Additionally, South Carolina participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2012 Annual $PM_{2.5}$ NAAQS, for the southeastern states. Taken as a whole, South Carolina's air quality regulations and practices demonstrate that SC DHEC has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS had been promulgated, and to provide such information to the EPA Administrator upon request. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) ***Permitting fees:*** Section 110(a)(2)(L) requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) the reasonable costs of reviewing and acting upon

any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

S.C. Code Ann. Section 48-2-50 prescribes that SC DHEC charge fees for environmental programs it administers pursuant to federal and State law and regulations including those that govern the costs to review, implement and enforce PSD and NNSR permits. Regulation 61-30, *Environmental Protection Fees*[22] prescribes fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations, establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process for refuting fees. This regulation may be amended as needed to meet the funding requirements of the State's permitting program. Additionally, South Carolina has a federally-approved title V program, Regulation 61-62.70, *Title V Operating Permit Program*[23], which fees provide for the implementation and enforcement of the requirements of PSD and NNSR for facilities once they begin operating. EPA has made the preliminary determination that South Carolina's SIP and practices adequately provide for permitting fees related to the 2012 NAAQS when necessary. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) ***Consultation/participation by affected local entities:*** Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local

[22] This regulation has not been incorporated into the federally-approved SIP.

[23] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

political subdivisions affected by the SIP. Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration,* of the South Carolina SIP requires that SC DHEC notify the public, which includes local entities, of an application, preliminary determination, the activity or activities involved in the permit action, any emissions change associated with any permit modification, and the opportunity for comment prior to making a final permitting decision. Also, as noted previously, S.C. Code Ann. Section 48-1-50(8) allows SC DHEC to "Cooperate with the governments of the United States or other states or state agencies or organizations, officials, or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements." By way of example, SC DHEC has recently worked closely with local political subdivisions during the development of its Transportation Conformity SIP, Regional Haze Implementation Plan, and Ozone Early Action Compacts. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate consultation with affected local entities related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(M).

V. Proposed Action

With the exception of interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), EPA is proposing to approve South Carolina's December 18, 2015, SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS for the previously described infrastructure SIP requirements. EPA is proposing to approve these portions of South Carolina's infrastructure SIP submission for the 2012 Annual

$PM_{2.5}$ NAAQS because these aspects of the submission are consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 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 proposed 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 proposed action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 proposed action for the state of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The Catawba Indian Nation Reservation is located within the State of South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, South Carolina statute 27-16-120, "all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities." However, EPA has determined that because this proposed rule does not have substantial direct effects on an Indian Tribe because, as noted previously, this action is not approving any specific rule, but rather proposing that South Carolina's already approved SIP meets certain CAA requirements. EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 9, 2016.

Heather McTeer Toney

Regional Administrator,

Region 4.

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