that South Carolina's SIP and practices adequately provide for permitting fees related to the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS when necessary.

13. 110(a)(2)(M) *Consultation/ participation by affected local entities:* Regulation 61–62.5, *Air Pollution Control Standards,* Standard No. 7, *Prevention of Significant Deterioration,* of the South Carolina SIP requires that DHEC notify the public of the application, preliminary determination, degree of incremental consumption, and the opportunity for comment prior to making a final permitting decision. DHEC has worked closely with local political subdivisions when developing its Transportation Conformity SIP, Regional Haze Implementation Plan, Early Action Compacts, and the 8-hour Ozone Attainment Demonstration for York County, South Carolina portion of the Charlotte-Gastonia-Rock Hill NC–SC nonattainment area. EPA has made the preliminary determination that South Carolina's SIP and practices adequately demonstrate consultation with affected local entities when necessary.

V. Proposed Action

As described above, DHEC has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, and September 25, 2009, guidance to ensure that the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in South Carolina. EPA is proposing to approve South Carolina's infrastructure submission for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, specifically 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for sections 110(a)(2)(A)–(H), (J)–(M), with the exception of 110(a)(2)(C) the nonattainment area requirements, 110(a)(2)(D)(i), sub-element 110(a)(2)(E)(ii) and 110(a)(2)(G) for section because its March 14, 2008, and September 18, 2009, submissions 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 Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

EPA has preliminarily determined that this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there are no ''substantial direct effects'' on an Indian Tribe as a result of this action. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte nonattainment area. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 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.'' Thus, the South Carolina SIP applies to the Catawba Reservation. EPA has also preliminarily determined that these revisions will not impose any substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: May 24, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–13716 Filed 6–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0238; FRL– 9681–9]

Approval and Promulgation of Implementation Plans; South Carolina; 110(a)(1) and (2)(E) and (G) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the South Carolina State Implementation Plan (SIP), submitted by the South Carolina Department of Health and Environmental Control (SC DHEC), on April 3, 2012, pertaining to Clean Air Act (CAA) Section 110(a)(2)(E) and (G) for the 1997 annual and 2006 24-hour fine particulate matter National Ambient Air Quality Standards (NAAQS). EPA is also proposing to approve portions of a certification submission provided by SC DHEC on March 14, 2008, to address CAA section 110(a)(1) and (2) requirements for the 1997 annual fine particulate matter ($PM_{2.5}$) NAAQS, as well as portions of a certification submission provided on September 18, 2009, to address CAA section 110(a)(1) and (2) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. Specifically, EPA is proposing action on two separate but related requirements addressed in South Carolina's April 3, 2012, SIP revision, and two previous certifications. First, South Carolina's SIP revision addresses the CAA section 128 requirements. Second, South Carolina's March 14, 2008, and September 18, 2009, certification submissions (as clarified in a letter on November 9, 2009), and the State's April 3, 2012, SIP revision were submitted to address sections 110(a)(2)(E)(ii) and 110(a)(2)(G), of the CAA for both the 1997 and 2006

$PM_{2.5}$ NAAQS. Section 110(a) of 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 1997 and 2006 $PM_{2.5}$ NAAQS are implemented, enforced, and maintained in South Carolina (hereafter referred to as ''infrastructure submission''). South Carolina's infrastructure submissions, provided to EPA on April 3, 2012, March 14, 2008, and September 18, 2009 (as clarified in a letter on November 3, 2009), as a whole, addressed the required infrastructure elements for the 1997 and 2006 $PM_{2.5}$ NAAQS, however the subject of this notice is limited to infrastructure elements 110(a)(2)(E)(ii) and 110(a)(2)(G). All other applicable South Carolina infrastructure elements will be addressed in a separate rulemaking.

DATES: Written comments must be received on or before July 6, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0238, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0238,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0238. 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 whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email 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, 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 EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

Table of Contents

I. Background
II. What elements are required under sections 110(a)(1) and (2)?
III. Scope of Infrastructure SIPs
IV. What is EPA's analysis of how South Carolina addressed the section 128 requirements?
V. What is EPA's analysis of how South Carolina addressed elements (E)(ii) and (G) of sections 110(a)(1) and (2) ''infrastructure'' provisions?
VI. Proposed Action
VII. Statutory and Executive Order Reviews

I. Background

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m^3) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 μg/m^3. *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a new 24-hour NAAQS of 35 μg/m^3 based on a 3-year average of the 98th percentile of 24-hour concentrations. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual $PM_{2.5}$ NAAQS, and no later than October 2009 for the 2006 24-hour $PM_{2.5}$ NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the ''infrastructure'' requirements for the 1997 annual $PM_{2.5}$ NAAQS. On March 10, 2005, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS by October 5, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state for

the 1997 $PM_{2.5}$ NAAQS as of October 3, 2008.

On October 22, 2008, EPA published a final rulemaking entitled, ''Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 $PM_{2.5}$ NAAQS (*See* 73 FR 62902). For those states that did receive findings, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs.

The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). South Carolina's infrastructure submissions were received by EPA on March 14, 2008, for the 1997 annual $PM_{2.5}$ NAAQS and on September 18, 2009, for the 2006 24-hour $PM_{2.5}$ NAAQS. The submissions were determined to be complete on September 14, 2008, and March 18, 2010, respectively. South Carolina was among other states that did not receive findings of failure to submit because it had provided a complete submission to EPA to address the infrastructure elements for the 1997 $PM_{2.5}$ NAAQS by October 3, 2008.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP submittal related to the ''infrastructure'' requirements for the 2006 24-hour $PM_{2.5}$ NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a **Federal Register** notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the South Carolina 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIP submittal addressing the applicable requirements of sections 110(a)(2)(A)–(H), (J)–(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport requirements, by September 30, 2012.

Today's action is proposing to approve South Carolina's infrastructure submissions for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for sections 110(a)(2)(E)(ii) and 110(a)(2)(G). Additionally, EPA is proposing to approve the April 3, 2012, SIP revision to address section 128 requirements. EPA is taking action on South Carolina's infrastructure submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS for sections 110(a)(2)(A)–(D), E(i) and E(iii), (F), (H), (J)–(M), except for section 110(a)(2)(C) the nonattainment area requirements and section 110(a)(2)(D)(i) interstate transport requirements in a separate action.

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 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. In the case of the 1997 and 2006 $PM_{2.5}$ NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

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 ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of the infrastructure rulemaking process are listed below [1] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8–Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' and EPA's September 25, 2009, memorandum entitled ''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).''

- 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.[2]
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and 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.

In today's action, EPA is only addressing section 110(a)(2)

[1] 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. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[2] This element is only addressed in the $PM_{2.5}$ context as it relates to attainment areas.

[3] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by South Carolina consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve South Carolina's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 46388 (August 20, 2007). In so doing, South Carolina's CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has promulgated a new rule to address the interstate transport. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule''). That rule was recently stayed by the D.C. Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's proposed rulemaking.

requirements related to sub-elements 110(a)(2)(E)(ii) and 110(a)(2)(G) for South Carolina for both the 1997 and 2006 $PM_{2.5}$ NAAQS. EPA is addressing the other 1997 and 2006 $PM_{2.5}$ NAAQS infrastructure requirements in a separate rulemaking.

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[5] Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (SSM); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and (ii) 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). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 1997 and 2006 $PM_{2.5}$ NAAQS from South Carolina.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for South Carolina.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''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 that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, 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 provisions, and some of which pertain to requirements

[5] *See* Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[9] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans. Finally, 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 and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [12] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [13] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [14] However, for the one exception to that general assumption (*i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State

[6] For example, section 110(a)(2)(E) 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 substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[8] *See Id.,* 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See* ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

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

[11] *See* ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[12] *Id.,* at page 2.

[13] *Id.,* at attachment A, page 1.

[14] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[15] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS (e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIPs for South Carolina.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP 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 that, 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 considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate 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 SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to 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 the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action 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 the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[18]

IV. What is EPA's analysis of how South Carolina addressed the section 128 requirements?

Section 128 of the CAA requires that states include provisions in their SIP to address conflict interest for state boards that oversee CAA permits and enforcement orders. Specifically, CAA section 128 reads as follows:

(a) Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that—

(1) Any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter, and

(2) Any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. A State may adopt any requirements respecting conflicts of interest for such

[15] *See* ''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),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[16] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 76 FR 21639 (April 18, 2011).

[17] EPA has recently utilized 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 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See* 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] EPA has recently disapproved 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* 75 FR 42342, 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements submitted as part of an implementation plan.

During the evaluation of South Carolina's SIP in regards to EPA's pending action on the State's March 14, 2008, and September 18, 2009 (as clarified on November 3, 2009), infrastructure submissions related to the section 110(a)(2)(E)(ii) sub-elements for the 1997 and 2006 $PM_{2.5}$ NAAQS, EPA noted that the State's implementation plan did not include provisions to address CAA 128 requirements. EPA alerted the State to this missing component of its implementation plan, and as a result, South Carolina provided the April 3, 2012, SIP revision to address the section 128 requirements.

South Carolina's April 3, 2012, SIP revision, proposes to include existing state statues to meet the requirements of section 128. Specifically, South Carolina is requesting that EPA approve portions of South Carolina's Ethics Reform Act into the South Carolina SIP to address section 128 requirements.[19] The State provides that the Ethics Reform Act satisfies the requirements of CAA section 128 for the SC DHEC Board, which is the ''board or body which approves permits and enforcement orders'' under the CAA in South Carolina. S.C. Code Ann. Section 8–13–100(31) defines ''State board, commission, or council * * * [as] an agency created by legislation which has statewide jurisdiction and which exercises some of the sovereign power of the State.'' South Carolina proposes that the aforementioned definition in conjunction with three sections of the Ethics Reform Act meet the CAA section 110(a)(1) requirements. These three sections are as follows:

(1) 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.''

(2) S.C. Code Ann. Section 8–13–700(A) 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.''

(3) S.C. Code Ann Section 8–13–700(B) provides in part that ''[n]o public official, public member, or public employee may make, participate in making, or in any way attempt to use his official office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest.''

South Carolina asserts that S.C. Code Ann. Section 8–13–700(B)(1)–(5) provides for disclosure of any conflicts of interest by public official, public members or public employee, which meets the requirement of CAA section 128(a)(2) that ''any potential conflicts of interest * * * be adequately disclosed.'' As mentioned in South Carolina's April 3, 2012, SIP revision, the South Carolina Attorney General concluded in an Opinion dated November 5, 1993, that the South Carolina Ethics, Government Accountability and Campaign Reform Act of 1991 (''Ethics Reform Act'')[20] in effect met the requirements of CAA section 128. This document can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0238.

Today, EPA is proposing to approve S.C. Code Ann. Sections 8–13–100(31), 8–13–730, 8–13–700(A) and 8–13–700(B)(1)–(5) into the South Carolina's SIP as meeting the requirements of section 128 of the CAA. This proposed approval supports EPA's proposed approval of the section 110(a)(2)(E)(ii) for South Carolina's infrastructure submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS as discussed below.

V. What is EPA's analysis of how South Carolina addressed elements (E)(ii) and (G) of sections 110(a)(1) and (2) ''infrastructure'' provisions?

The South Carolina infrastructure submissions address the provisions of sections 110(a)(1) and (2) with respect to elements (E)(ii) and (G), as described below.

1. 110(a)(2)(E) *Adequate resources:* 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. In today's action, EPA is proposing to approve South Carolina's SIP as meeting the requirements of section 110(a)(2)(E)(ii) (which is one of the three sub-elements required pursuant to section 110(a)(2)(E)) as described in South Carolina's certification submissions dated March 14, 2008, for the 1997 $PM_{2.5}$ NAAQS, and September 18, 2009, for the 2006 $PM_{2.5}$ NAAQS. See Section IV of this proposed rulemaking for EPA's analysis of South Carolina's SIP revision to address CAA section 128 requirements. EPA has made the preliminary determination that the South Carolina SIP will meet the section 128 requirements for implementation of the 1997 and 2006 $PM_{2.5}$ NAAQS once the proposed revisions discussed above in section IV have been adopted into the South Carolina SIP. EPA is taking action on 110(a)(2)(E)(i) and 110(a)(2)(E)(iii) as it relates to South Carolina in certification submissions dated March 14, 2008, for the 1997 $PM_{2.5}$ NAAQS, and September 18, 2009, for the 2006 $PM_{2.5}$ NAAQS in a separate rulemaking.

2. 110(a)(2)(G) *Emergency episodes:* Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. The Executive Director of the SC DHEC is empowered by the South Carolina Code to respond to air pollution episodes and other air quality and the SC DHEC has contingency plans to implement emergency episode provisions in the SIP. On September 25, 2009, EPA released the guidance entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS).'' This guidance clarified that ''to address the section 110(a)(2)(G) element, states with air quality control regions identified as either Priority I, IA, or Priority II by the 'Prevention of Air Pollution Emergency Episodes' rule at 40 CFR 51.150, must develop emergency episode contingency plans.'' EPA's September 25, 2009, guidance also states that ''until the Agency finalized changes to the emergency episode

[19] On November 12, 1993, South Carolina submitted a package addressing the requirements of section 507 of the CAA and 40 CFR 70. As provided in the Attorney General's November 5, 1993 opinion on the title V submission, South Carolina included a specific reference to the state laws and regulations that addressed CAA section 128 requirements. Specifically, while EPA approved the delegation title V permitting authority, effective July 26, 1995 (40 CFR 70 Appendix A), EPA did not receive this as a SIP revision and as such has not yet approved the state statues that related to CAA section 128 into the South Carolina SIP.

[20] S.C. Code Ann. Section 8–13–700 (2011).

regulation to establish for $PM_{2.5}$ specific levels for classifying areas as Priority I, IA, or II for $PM_{2.5}$, and to establish a significant harm level (SHL) * * *,'' the Agency recommends that states with a 24-Hour $PM_{2.5}$ concentration above 140 $\mu g/m^3$ (using the most recent three years of data) develop an emergency episode plan.

On March 14, 2008, and September 18, 2009, SC DHEC submitted certifications that its SIP adequately addressed the section 110(a)(2)(G) requirements for the 1997 and 2006 $PM_{2.5}$ NAAQS. On November 3, 2009, following EPA's release of the September 25, 2009, guidance, South Carolina submitted a clarification to the *South Carolina Fine Particulate Matter Air Quality Implementation Plan: CAA 110(a)(2)(G) requirements for the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS.* South Carolina had not previously public noticed its certification submissions with regard to 110(a)(2)(G) for the $PM_{2.5}$ NAAQS, so on April 3, 2012, South Carolina submitted a SIP revision to address the 110(a)(2)(G) requirements for the $PM_{2.5}$ NAAQS and provided public notice for this element.

EPA has reviewed South Carolina's April 3, 2012, SIP revision and has made the preliminary determination, that this SIP revision, and in combination with South Carolina's March 14, 2008, and September 8, 2009 (as clarified on November 3, 2009), would meet the requirements of 110(a)(2)(G). First, EPA has determined that the 2008–2010 ambient air quality monitoring data for South Carolina do not exceed 140.0 $\mu g/m^3$ (the State's $PM_{2.5}$ levels have consistently remained below the 140.0 $\mu g/m^3$ level). Second, the State has appropriate general emergency powers to address $PM_{2.5}$ related episodes to protect the environment and public health. Given the State's monitored $PM_{2.5}$ levels, EPA is proposing that South Carolina is not required to submit an emergency episode plan and contingency measures at this time, for the 1997 and 2006 $PM_{2.5}$ standards. As a result, EPA is proposing to approve South Carolina's infrastructure submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS as these submissions related to the section 110(a)(2)(G) requirement. EPA has made the preliminary determination that South Carolina's SIP and practices are adequate for emergency powers related to the 1997 and 2006 $PM_{2.5}$ NAAQS.

VI. Proposed Action

As described above, EPA is proposing to approve South Carolina's April 3, 2012, SIP revision to incorporate provisions into the South Carolina SIP to address section 128 requirements of the CAA. In today's rulemaking, EPA is also proposing to approve portions of a certification submission provided by SC DHEC on March 14, 2008, to address infrastructure requirements for the 1997 $PM_{2.5}$ NAAQS, and to approve portions of a certification submission provided on September 18, 2009, to address infrastructure requirements for the 2006 $PM_{2.5}$ NAAQS. Specifically, EPA is proposing to approve infrastructure elements 110(a)(2)(E)(ii) and 110(a)(2)(G) of South Carolina's March 15, 2008, and September 19, 2009 (as clarified on November 3, 2009), infrastructure submissions because they are consistent with section 110 of the CAA.[21]

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 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 Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

EPA has preliminarily determined that this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there are no ''substantial direct effects'' on an Indian Tribe as a result of this action. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte nonattainment area. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 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.'' Thus, the South Carolina SIP applies to the Catawba Reservation. EPA has also preliminarily determined that these revisions will not impose any substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: May 24, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–13714 Filed 6–5–12; 8:45 am]

BILLING CODE 6560–50–P

[21] As discussed in section V.1 above, EPA's proposed approval the section 110(a)(2)(E)(ii) sub-element is contingent upon the Agency taking final action to approve today's proposed substantive revisions to the South Carolina SIP discussed in section IV to address the requirements of CAA section 128.