

adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

2. *Add a temporary section, § 100.35T05-1176 to read as follows:*

#### **§ 100.35T05-1176 Special Local Regulations for Marine Events; Potomac River, Charles County, MD.**

(a) *Regulated area.* The following location is a regulated area: All waters of the Potomac River, within lines connecting the following positions: from latitude 38°22'05" N, longitude 076°59'03" W, thence to latitude 38°21'50" N, longitude 077°00'54" W, and from latitude 38°21'29" N, longitude 077°00'54" W to latitude 38°21'45" N, longitude 076°58'59" W. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol vessel, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) Persons desiring to transit the regulated area must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz).

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event date and times.

(d) *Enforcement period:* This section will be enforced from 7 a.m. until 12:30 p.m. on June 2, 2012.

Dated: January 30, 2012.

**Mark P. O'Malley,**

*Captain, U.S. Coast Guard, Captain of the Port Baltimore.*

[FR Doc. 2012-2939 Filed 2-8-12; 8:45 am]

BILLING CODE 9110-04-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R06-OAR-2008-0633; FRL-9628-5]

#### Approval and Promulgation of Implementation Plans; Arkansas; Infrastructure Requirements for the 1997 Ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS and Interstate Transport Requirements for the 1997 Ozone NAAQS and 2006 PM<sub>2.5</sub> NAAQS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to partially approve and partially disapprove submittals from the state of Arkansas pursuant to the Clean Air Act (CAA or Act) that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and the 1997 and 2006 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS or standards). We are proposing to find that the current Arkansas State Implementation Plan (SIP) meets the following infrastructure elements for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS: 110(a)(2)(A), (B), (E), (F), (G), (H), (K), (L), (M), and portions of (C), (D)(ii) and (J). We are proposing to find that the current Arkansas SIP does not meet the infrastructure requirements for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS at 110(a)(2) for portions of (C), (D)(ii), and (J) because the EPA-approved SIP prevention of significant deterioration (PSD) program does not apply to greenhouse gas (GHG) emitting sources. We also are proposing to find that the current Arkansas SIP does not meet the infrastructure requirements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS at 110(a)(2) for portions of (C), (D)(ii), and (J) because Arkansas has not submitted the PSD SIP revision required by EPA's Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (73 FR 28321, May 16, 2008). Further, we are proposing to partially approve and partially disapprove the provisions of SIP submissions that emissions from sources in Arkansas do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration of air quality, with regard to the 1997 8-hour ozone NAAQS and the 2006 PM<sub>2.5</sub> NAAQS. The partial disapprovals herein are because Arkansas cannot

issue permits for GHG emissions and because the State did not submit the required PM<sub>2.5</sub> PSD SIP revision. Finally, for purposes of the 1997 8-hour ozone NAAQS, EPA is proposing to approve SIP revisions that modify the Arkansas PSD SIP to include nitrogen oxides (NO<sub>x</sub>) as an ozone precursor.

This action is being taken under section 110 and part C of the Act. Finally, EPA is also proposing to make a correction to the attainment status table in 40 CFR 81.304 to accurately reflect the redesignation date of Crittenden County, Arkansas to attainment for the 1997 8-hour ozone standard.

**DATES:** Comments must be received on or before March 12, 2012.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2008-0633, by one of the following methods:

- **Federal Rulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **U.S. EPA Region 6 "Contact Us" Web site:** <http://epa.gov/region6/r6comment.htm>. Please click on "6PD (Multimedia)" and select "Air" before submitting comments.

- **Email:** Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- **Fax:** Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

- **Mail:** Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- **Hand or Courier Delivery:** Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R06-OAR-2008-0633. 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](http://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 information that you consider to be CBI or otherwise

protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://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](http://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 docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202.

The State submittal is also available for public inspection during official business hours by appointment: Arkansas Department of Environmental Quality (ADEQ), Planning and Air Quality Analysis Branch, 5301 Northshore Drive, North Little Rock, Arkansas 72118.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey Riley, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-8542; fax number 214-665-6762; email address [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, "we," "us," and "our" means EPA.

**Table of Contents**

- I. Background
  - A. What are the National Ambient Air Quality Standards?
  - B. What is a SIP?
  - C. What is the background for this rulemaking?
    - 1. Section 110(a)(1) and (2) Infrastructure SIP Elements
    - 2. What elements are required under Section 110(a)(2)?
    - 3. 110(a)(2)(D)(i) Interstate Transport SIP Elements
    - 4. Revisions to the Arkansas PSD SIP
    - 5. Greenhouse Gas (GHG) Component of PSD Programs
    - 6. PM<sub>2.5</sub> SIP Revisions
- II. What action is EPA proposing?
- III. How has Arkansas addressed the elements of Section 110(a)(2)?
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

**I. Background**

**A. What are the National Ambient Air Quality Standards?**

Section 109 of the Act requires EPA to establish NAAQS for pollutants that "may reasonably be anticipated to endanger public health and welfare," and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety, and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities.

**B. What is a SIP?**

The SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS. The SIP is required by section 110 and other provisions of the Act. These SIPs can be extensive, containing state

regulations or other enforceable documents and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the federally-enforceable SIP. Another important aspect of the SIP is to ensure that emissions from within the state do not have certain prohibited impacts upon the ambient air in other states through interstate transport of pollutants. This SIP requirement is specified in section 110(a)(2)(D) of the CAA. Pursuant to that provision, each state's SIP must contain provisions adequate to prevent, among other things, emissions that interfere with measures required to be included in the SIP of any other state to prevent significant deterioration of air quality in any other state. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin.

### C. What is the background for this rulemaking?

Under sections 110(a)(1) and (2) of the Act, states are required to submit SIPs that provide for the implementation, maintenance, and enforcement (the infrastructure) of a new or revised NAAQS within three years following the promulgation of the NAAQS, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the specific infrastructure elements that must be incorporated into the SIPs, including for example, requirements for emission inventories, NSR, air pollution control measures, and monitoring that are designed to assure attainment and maintenance of the NAAQS. Table 1, displayed in Section D of this rulemaking, lists all 14 infrastructure elements.<sup>1</sup> EPA refers to the requirements of section 110(a)(2)(A)–(C), (D)(ii), (E)–(H), and (J)–(M) as the “infrastructure” SIPs. Additionally, EPA refers to the requirements of section 110(a)(2)(D)(i) as the “interstate transport” SIPs. EPA provided separate guidance to states on each type of SIP, infrastructure and interstate transport,

<sup>1</sup> Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (i) 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 (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D Title I of the CAA. Therefore, this action does not cover these specific SIP elements.

and these actions are on separate tracks and timelines.

### 1. Section 110(a)(1) and (2) Infrastructure SIP Elements

On July 18, 1997, we published new and revised NAAQS for ozone (62 FR 38856) and PM (62 FR 38652). For ozone, we set an 8-hour standard of 0.08 parts per million (ppm) to replace the 1-hour standard of 0.12 ppm. For PM, we set a new annual and a new 24-hour NAAQS for particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (denoted PM<sub>2.5</sub>). The annual PM<sub>2.5</sub> standard was set at 15 micrograms per cubic meter (µg/m<sup>3</sup>). The 24-hour PM<sub>2.5</sub> standard was set at 65 µg/m<sup>3</sup>. On October 17, 2006, we published revised standards for PM (71 FR 61144). For PM<sub>2.5</sub> the annual standard of 15 µg/m<sup>3</sup> was retained and the 24-hour standard was revised to 35 µg/m<sup>3</sup>. For PM<sub>10</sub> the annual standard was revoked and the 24-hour standard (150 µg/m<sup>3</sup>) was retained. For more information on these standards, please see the 1997 and 2006 **Federal Register** notices (62 FR 38856, 62 FR 38652, and 71 FR 61144).

Thus, states were required to submit such SIPs for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS to EPA no later than June 2000.<sup>2</sup> However, intervening litigation over the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS created uncertainty about how to proceed and many states did not provide the required “infrastructure” SIP submission for these newly promulgated 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 8-hour ozone and PM<sub>2.5</sub> NAAQS. 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) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received

<sup>2</sup> EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). This rulemaking does not address the 2008 ozone standard.

from each state as of January 7, 2008. With regard to the 1997 PM<sub>2.5</sub> NAAQS, 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) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 PM<sub>2.5</sub> NAAQS by October 5, 2008.

On March 27, 2008, and October 22, 2008, we published findings concerning whether states had made the 110(a)(2) submissions for the 1997 ozone (73 FR 16205) and PM<sub>2.5</sub> standards (73 FR 62902). In the March 27, 2008 action, we found that Arkansas had made a submission that addressed some, but not all of the section 110(a)(2) requirements of the Act necessary to implement the 1997 8-hour ozone NAAQS.<sup>3</sup> In the October 22, 2008 action, we found that Arkansas had made a complete submission intended to provide for the basic program elements specified in section 110(a)(2) of the Act necessary to implement the 1997 PM<sub>2.5</sub> NAAQS.

On October 2, 2007, we issued “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards,” Memorandum from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards (OAQPS).<sup>4</sup> On September 25, 2009, we issued “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS),” Memorandum also from William T. Harnett, Director, AQP, OAQPS. Each of these guidance memos addresses the SIP elements found in 110(a)(2). In each of these guidance memos, the guidance states that to the extent that existing SIPs for ozone and PM already meet the requirements, states need only certify that fact to us.

On December 17, 2007, March 28, 2008, and September 16, 2009, the State of Arkansas submitted letters certifying that Arkansas has addressed any potential infrastructure issues associated with ozone and PM<sub>2.5</sub> and

<sup>3</sup> In the March 27, 2008 action we found that Arkansas had not submitted a SIP revision that modified Arkansas' Prevention of Significant Deterioration (PSD) SIP for the 1997 8-hour ozone NAAQS to include NO<sub>x</sub> as an ozone precursor, which is necessary for approval of elements 110(a)(2)(C) and the PSD and visibility portion of element 110(a)(2)(J). On February 17, 2010, Arkansas submitted the necessary PSD SIP revision.

<sup>4</sup> This and any other guidance documents referenced in this action are in the docket for this rulemaking.

fulfilled its infrastructure SIP obligations. The letters provided information on how the current Arkansas SIP provisions meet the 110(a)(2) requirements. These letters are in the docket for this rulemaking.

*Additional information:* EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM<sub>2.5</sub> 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.<sup>5</sup> 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 the issues 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 Prevention of Significant Deterioration 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 SIP submittals for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS submissions from Arkansas.

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 disapproval of the infrastructure SIP submission of a given state should be interpreted as a reapproval 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<sub>2.5</sub> NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on these infrastructure SIP submittals for Arkansas.

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, new source review 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

<sup>5</sup> 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.

required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.<sup>6</sup> 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.<sup>7</sup>

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).<sup>8</sup> 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.<sup>9</sup> 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 SIP. 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.<sup>10</sup>

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<sub>2.5</sub> 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<sub>2.5</sub> NAAQS.<sup>11</sup> 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.”<sup>12</sup> 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.”<sup>13</sup> 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.”<sup>14</sup> For the one exception to that general assumption, however, *i.e.*, how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM<sub>2.5</sub> NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for

<sup>6</sup> 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.

<sup>7</sup> 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, *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 NO<sub>x</sub> SIP Call; Final Rule,” 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase “contribute significantly to nonattainment”).

<sup>8</sup> See, *e.g.*, *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)).

<sup>9</sup> 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<sub>2.5</sub> 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<sub>2.5</sub> 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.

<sup>10</sup> For example, implementation of the 1997 PM<sub>2.5</sub> NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

<sup>11</sup> See, “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> 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”).

<sup>12</sup> *Id.*, at page 2.

<sup>13</sup> *Id.*, at attachment A, page 1.

<sup>14</sup> *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.

the 1997 PM<sub>2.5</sub> NAAQS, EPA assumed that each State 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 SIP 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<sub>2.5</sub> NAAQS.<sup>15</sup> 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<sub>2.5</sub> NAAQS, but were germane to these SIP submissions for the 2006 PM<sub>2.5</sub> 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<sub>2.5</sub> 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 SIP submittals for Arkansas.

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<sub>2.5</sub> 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.<sup>16</sup> Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.<sup>17</sup> Significantly, EPA's determination that an action on the infrastructure SIP submittal 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.<sup>18</sup>

## 2. What elements are required under Section 110(a)(2)?

Pursuant to the October 2, 2007 "EPA guidance for addressing the SIP infrastructure elements required under sections 110(a)(1) and (2) for the 1997 ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS," there are 14 essential components that must be in the SIP. These are listed in Table 1 below.

<sup>16</sup> 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).

<sup>17</sup> 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, *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).

<sup>18</sup> 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, *e.g.*, 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

<sup>15</sup> See, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) 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").

TABLE 1—SECTION 110(A)(2) ELEMENTS REQUIRED IN SIPS

Clean Air Act Citation	Brief description
Section 110(a)(2)(A) .....	Enforceable emission limits and other control measures.
Section 110(a)(2)(B) .....	Ambient air quality monitoring/data system.
Section 110(a)(2)(C) .....	Program for enforcement of control measures.
Section 110(a)(2)(D) .....	International and interstate transport.
Section 110(a)(2)(E) .....	Adequate resources.
Section 110(a)(2)(F) .....	Stationary source monitoring system.
Section 110(a)(2)(G) .....	Emergency power.
Section 110(a)(2)(H) .....	Future SIP revisions.
Section 110(a)(2)(J) <sup>19</sup> .....	Consultation with government officials.
Section 110(a)(2)(J) .....	Public notification.
Section 110(a)(2)(J) .....	Prevention of significant deterioration (PSD) and visibility protection.
Section 110(a)(2)(K) .....	Air quality modeling/data.
Section 110(a)(2)(L) .....	Permitting fees.
Section 110(a)(2)(M) .....	Consultation/participation by affected local entities.

3. 110(a)(2)(D)(i) Interstate Transport SIP Elements

Section<sup>19</sup> 110(a)(2)(D)(i) pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its “Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” (2006 Guidance). EPA developed the 2006 Guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone standards and the 1997 PM<sub>2.5</sub> standards. As identified in the 2006 Guidance, the “good neighbor” provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts that will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; and (4) interfere with efforts to protect visibility in other states.

On December 17, 2007, we received a certification from the State of Arkansas intended to address the requirements of

<sup>19</sup> Section 110(a)(2)(I) pertains to the nonattainment planning requirements of part D, Title I of the Act. This section is not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but are due at the time the nonattainment area plan requirements are due pursuant to section 172. Thus this action does not cover section 110(a)(2)(I).

section 110(a)(2)(D)(i) for both the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> standard. On March 28, 2008, we received a certification<sup>20</sup> from the State intended to address the requirements of section 110(a)(2)(D)(i) for the 2006 PM<sub>2.5</sub> NAAQS. In this rulemaking, for the 1997 ozone and 2006 PM<sub>2.5</sub> NAAQS, we are addressing only the 110(a)(2)(D)(i) requirement that pertains to preventing sources in Arkansas from emitting pollutants that will interfere with measures required to prevent significant deterioration of air quality in other states.<sup>21</sup> In its submission, Arkansas indicated that its current PSD New Source Review (NSR) SIP is adequate to prevent such interference.

4. Revisions to the Arkansas PSD SIP

To meet the infrastructure requirements of section 110(a)(2)(C) of the Act for the 1997 ozone standard, EPA believes the State must have updated its rules for PSD to treat NO<sub>x</sub> as a precursor to ozone (70 FR 71612, November 29, 2005). PSD rules to treat NO<sub>x</sub> as a precursor to ozone are also

<sup>20</sup> This is the same submittal that addresses the 110(a)(2) infrastructure SIP elements for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS.

<sup>21</sup> EPA published a finding on April 25, 2005 (70 FR 21147) that all states had failed to submit SIPs addressing interstate transport for the 1997 ozone and PM<sub>2.5</sub> standards, as required by section 110(a)(2)(D)(i). EPA proposed a FIP on August 2, 2010 (75 FR 45210) to limit emissions of ozone precursors and PM that contribute significantly to nonattainment of the 1997 ozone and 1997 and 2006 PM NAAQS in other states and interfere with maintenance of these three NAAQS in other states. EPA finalized the FIP on July 6, 2011; known as the Cross-State Air Pollution Rule, it requires that Arkansas (and 26 other states in the eastern half of the United States) must significantly improve air quality by reducing power plant emissions that cross state lines and contribute to ground-level ozone and fine particle pollution in other states. See 76 FR 48208 (published August 8, 2011) and [www.epa.gov/crossstaterule](http://www.epa.gov/crossstaterule). On December 30, 2011, the U.S. Court of Appeals for the DC Circuit issued its ruling to stay the Cross-State Air Pollution Rule, pending judicial review. See <http://www.epa.gov/airtransport/pdfs/CourtDecision.pdf>.

required to meet the third 110(a)(2)(D)(i) interstate transport prong, interference with provisions to prevent significant deterioration of air quality in other states. On February 17, 2010, Arkansas submitted revisions that provided for NO<sub>x</sub> to be treated as a precursor to ozone formation in its PSD program. We are proposing action on this revision to the PSD program that implements the provisions for NO<sub>x</sub> as a precursor because EPA believes that this is a necessary provision for implementation of the 1997 ozone standard.

5. Greenhouse Gas (GHG) Component of PSD Programs

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today’s proposed action on the Arkansas infrastructure SIP. Four of these actions include, as they are commonly called, the “Endangerment Finding” and “Cause or Contribute Finding,” which EPA issued in a single final action,<sup>22</sup> the “Johnson Memo Reconsideration,”<sup>23</sup> the “Light-Duty Vehicle Rule,”<sup>24</sup> and the “Tailoring Rule.”<sup>25</sup> Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs

<sup>22</sup> “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.” 74 FR 66496 (December 15, 2009).

<sup>23</sup> “Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.” 75 FR 17004 (April 2, 2010).

<sup>24</sup> “Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.” 75 FR 25324 (May 7, 2010).

<sup>25</sup> Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule.” 75 FR 31514 (June 3, 2010).

emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

The approved Arkansas SIP contained errors that resulted in its failure to address, or provide adequate legal authority for, the implementation of a GHG PSD program in Arkansas. On this basis, on December 13, 2010, EPA issued a finding that Arkansas' SIP was substantially inadequate to meet CAA requirements because it did not apply PSD requirements to GHG emitting sources (75 FR 77698). This rulemaking also issued a "SIP call" to Arkansas, requiring the state to revise its SIP as necessary to correct the inadequacies. The SIP call established a deadline of December 22, 2010 for Arkansas to submit its corrective SIP revision. In response to EPA's proposal of the SIP call (75 FR 53892), the state declined the 12-month deadline for SIP revision following the finding of substantial inadequacy in order to ensure that PSD permitting authorities for newly constructed or modified sources remain in place.<sup>26</sup> As required following the SIP call, EPA promulgated a Federal Implementation Plan (FIP), which established EPA as the permitting authority for GHG-emitting sources in Arkansas (75 FR 82246). EPA took these actions through final rulemaking, effective upon publication, to ensure the availability of a permitting authority—EPA—in Arkansas for GHG-emitting sources when they became subject to PSD on January 2, 2011. The FIP allowed those sources to proceed with plans to construct or expand.

As we discuss further in this proposal and in the TSD, the current EPA-approved SIP PSD program does not apply to GHG-emitting sources that emit at or above the levels of emissions set in the Tailoring Rule, or at other appropriate levels. Thus, the Arkansas SIP does not satisfy portions of elements within the infrastructure and transport requirements as they pertain to GHGs. However, EPA's disapproval of those elements does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Arkansas PSD program to address permitting GHGs at or above the Tailoring Rule thresholds.

<sup>26</sup> See letter from Teresa Marks to Lisa P. Jackson, dated October 1, 2010, in the docket for this rulemaking.

## 6. PM<sub>2.5</sub> SIP Revisions

To implement the PSD NSR component of section 110(a)(2)(C) for the 1997 and 2006 PM<sub>2.5</sub> standards, states were required to submit the necessary SIP revisions to EPA by May 16, 2011 under EPA's Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (73 FR 28321, May 16, 2008). At present, Arkansas has not submitted revisions to satisfy this requirement, and therefore the Arkansas federally-approved PSD NSR SIP does not fully implement the PSD NSR program for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. Although the State has indicated that regulations are currently being developed to address section 110(a)(2)(C) for the implementation of the NSR program for the 1997 and 2006 PM<sub>2.5</sub> standards, the state-level rulemaking process is anticipated to proceed on a timeline that will prevent Arkansas from adopting these regulations before EPA is required to take final action on the State's 110(a)(2) infrastructure SIP. Therefore, we are proposing to find that the current Arkansas PSD SIP does not meet the requirements of section 110(a)(2)(C) with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS because the State failed to submit the PSD SIP revision required by the May 16, 2008 rulemaking.

## II. What action is EPA proposing?

### A. Section 110(a)(1) and (2)

EPA is proposing to partially approve and partially disapprove the Arkansas SIP submittals that identify where and how the 14 basic infrastructure elements are in the EPA-approved SIP as specified in CAA section 110(a)(2). The Arkansas submittals do not include revisions to the SIP, but do document how the current Arkansas SIP already includes the required infrastructure elements. In today's action, we are proposing to find that the following infrastructure elements are contained in the current Arkansas SIP regarding implementation of the 1997 ozone and 1997 and 2006 PM<sub>2.5</sub> standards: emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); program for enforcement of control measures, except for the portion that addresses GHGs and PM<sub>2.5</sub> emissions (section 110(a)(2)(C)); international and interstate pollution abatement, except for the portion that addresses GHGs and PM<sub>2.5</sub> emissions (section 110(a)(2)(D)(ii)); adequate resources (section 110(a)(2)(E)); stationary source monitoring system (section 110(a)(2)(F)); emergency power

(section 110(a)(2)(G)); future SIP revisions (section 110(a)(2)(H)); consultation with government officials (section 110(a)(2)(J)); public notification (section 110(a)(2)(I)); PSD and visibility protection, except for the PSD portion that addresses GHGs and PM<sub>2.5</sub> emissions (section 110(a)(2)(J)); air quality modeling/data (section 110(a)(2)(K)); permitting fees (section 110(a)(2)(L)); and consultation/participation by affected local entities (section 110(a)(2)(M)).

As discussed in section I.C.6 of this proposal, we are proposing to find that the current Arkansas SIP does not meet the infrastructure requirements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS at 110(a)(2) for portions of (C), (D)(ii), and (J) because Arkansas failed to submit the PSD SIP revision required by EPA's Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (73 FR 28321, May 16, 2008). We are also proposing to find that the current Arkansas SIP does not meet the infrastructure requirements for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM<sub>2.5</sub> NAAQS at 110(a)(2) for portions of (C), (D)(ii), and (J) because the Arkansas SIP PSD program does not apply to GHG-emitting sources.

We are proposing to approve severable portions of the December 17, 2007 and the March 28, 2008 submissions from Arkansas, demonstrating that Arkansas has adequately addressed one of the four required prongs of the 110(a)(2)(D)(i) interstate transport element, specifically the prong that requires that the SIP prohibit air emissions from sources within a state from interfering with measures required to prevent significant deterioration of air quality in any other state.<sup>27</sup> We are proposing to determine that emissions from sources in Arkansas do not interfere with measures to prevent significant deterioration of air quality in any other state for the 1997 8-hour ozone NAAQS (CAA section 110(a)(2)(D)(i)(II)), except for the portion that addresses GHG emissions. We are proposing to disapprove the portion of the Arkansas interstate transport SIP element that prohibits GHG emissions from sources within Arkansas from interfering with measures required to prevent significant deterioration of air quality in any other state (section 110(a)(2)(D)(i)). We are proposing to determine that PM<sub>2.5</sub> emissions from

<sup>27</sup> As noted in Section I.C.2 of this action, the December 17, 2007 submittal addresses the 1997 ozone and PM<sub>2.5</sub> standards; it does not address the 2006 PM<sub>2.5</sub> standard. The March 28, 2008 submittal addresses the 110(a)(2) infrastructure and interstate transport elements for the 2006 PM<sub>2.5</sub> NAAQS.

sources in Arkansas do interfere with measures to prevent significant deterioration of air quality in any other state for the 2006 PM<sub>2.5</sub> NAAQS. Therefore, we are proposing to disapprove the portion of the Arkansas interstate transport SIP element that prohibits PM<sub>2.5</sub> emissions from sources within Arkansas from interfering with measures required to prevent significant deterioration of air quality in any other state (section 110(a)(2)(D)(i)) for the 2006 PM<sub>2.5</sub> NAAQS. We are not addressing in this action the 1997 PM<sub>2.5</sub> NAAQS nor the three remaining prongs of section 110(a)(2)(D)(i)<sup>28</sup> for the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS. We will take action on the three remaining prongs in separate rulemakings.

In conjunction with our proposed finding that the Arkansas SIP meets the section 110(a)(1) and (2) infrastructure SIP elements listed above, we are also proposing to fully approve four severable portions of a SIP revision submitted by the ADEQ to EPA on February 17, 2010. This submittal contains rule revisions by ADEQ to (1) Regulate NO<sub>x</sub> emissions in its PSD permit program as a precursor to ozone; (2) add NO<sub>x</sub> to the PSD definitions for *Major Modification* and *Major Stationary Source*; (3) under the PSD definition for *Significant*, add the emission rate for NO<sub>x</sub>, as a precursor to ozone, as 40 tpy; and (4) under the PSD requirements, allow for an exemption with respect to ambient air quality monitoring data for a source with a net emissions increase less than 100 tpy of NO<sub>x</sub>. The actions proposed herein are described in greater detail in Section III of this rulemaking and in the TSD. At this time, EPA is not taking action on other portions of the February 17, 2010 SIP revision submitted by ADEQ; EPA intends to act on the other revisions at a later date.

#### *B. Why is EPA proposing a partial approval, partial disapproval?*

Section 110(k)(3) of the Act states that EPA may partially approve and partially disapprove a SIP submittal if it finds that only a portion of the submittal meets the requirements of the Act. We believe that the Arkansas SIP meets a majority of the requirements of section 110(a)(2) of the Act and that specific

<sup>28</sup> The remaining three prongs pertain to prohibiting air emissions within Arkansas from: (1) Significantly contributing to nonattainment in any other state, (2) interfering with maintenance of the relevant NAAQS in any other state, and (3) interfering with measures required to protect visibility in any other state. We proposed action on the visibility prong on October 17, 2011 at 76 FR 64186.

portions of three elements of section 110(a)(2) are not met.<sup>29</sup> Because the portions proposed for disapproval are independent from those proposed for approval, we believe that the Arkansas Infrastructure SIP can be partially approved and partially disapproved.

#### *C. What are the implications of a partial approval, partial disapproval?*

Enforcement of a state regulation (or rule) before and after it is incorporated into the federally approved SIP is primarily a state responsibility. However, after the rule is federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the Act. If a state rule is disapproved, it is not incorporated into the federally approved SIP, and is not enforceable by EPA or by citizens under section 304. Disapproval of any of the Arkansas infrastructure SIP elements would not trigger sanctions under section 179 of the Act, because the submittals are not required by part D of Title I of the Act and are not required by a call for a SIP revision under section 110(k)(5) of the Act.

Under section 110(c) of the Act, disapproval of a SIP in whole or in part requires EPA to promulgate a Federal implementation plan (FIP) at any time within two years following final disapproval, unless the State submits a plan or plan revision that corrects the deficiency—and the EPA approves the plan or plan revision—before the EPA promulgates such FIP. This two-year period is commonly referred to as the “FIP clock.” Here, based on Arkansas’s failure to submit the required PM<sub>2.5</sub> PSD SIP revision, and because Arkansas cannot issue permits for GHG emissions, we are proposing to partially disapprove certain severable elements of the Arkansas infrastructure SIP. Accordingly, EPA is required by law to promulgate a FIP at any time within two years of the final rulemaking, unless Arkansas submits and we approve a new SIP or SIP revisions that correct the deficiencies, or unless EPA has already fulfilled its FIP obligation.

### **III. How has Arkansas addressed the elements of Section 110(a)(2)?**

The Arkansas submittals address the elements of Section 110(a)(2) as described below. We provide a more detailed review and analysis of the Arkansas infrastructure and transport SIP elements in the TSD.

<sup>29</sup> The three elements refer to the infrastructure and interstate transport SIP elements discussed in section II above.

*Enforceable emission limits and other control measures, pursuant to section 110(a)(2)(A):* Section 110(a)(2)(A) requires that all measures and other elements in the SIP be enforceable. This provision does not require the submittal of regulations or emission limits developed specifically for attaining the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> standards. Those regulations are due later as part of attainment demonstrations.

The Arkansas Water and Air Pollution Control Act (AWAPCA), found in Title 8, Chapter 4 of the Arkansas Code Annotated (A.C.A.) names the Arkansas Department of Environmental Quality (ADEQ) as the state’s air pollution control agency and provides enforcement authority to the ADEQ (37 FR 10841, May 31, 1972). ADEQ was originally created by the Arkansas General Assembly as the Arkansas Water Pollution Control Commission by Act 472 of 1949. Act 183 of 1965 changed the Commission’s name to the Arkansas Pollution Control Commission (APCC) and gave it the power to regulate air pollution. A reorganization of state government in 1971 renamed the APCC to the Arkansas Pollution Control and Ecology Commission (APCEC), and created the Department of Pollution Control and Ecology as a cabinet-level agency headed by a director appointed by the Commission. In 1996, the Arkansas General Assembly voted to rename the Department of Pollution Control and Ecology to the Arkansas Department of Environmental Quality, effective March 31, 1999. The Department is responsible for the day-to-day administration of the Commission’s regulations for a variety of environmental programs.

The APCEC has promulgated rules to limit and control emissions of, among other things, particulate matter (PM), sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and volatile organic compounds (VOCs).<sup>30</sup> These rules include emission limits, control measures, permits, fees, and compliance schedules and are found in APCEC Regulation 19, Regulation 26, and Regulation 31: Regulation 19, Chapters 1, 3–5, 7, 8, 10, 13–15; Regulation 26, Chapters 1, 3 and 7; and Regulation 31, Chapters 1, 3, 4 and 8.

In this proposed action, EPA has not reviewed and is not proposing to take any action to approve or disapprove any existing Arkansas SIP provisions with regard to excess emissions during

<sup>30</sup> NO<sub>x</sub> and VOCs are precursors to ozone. PM can be emitted directly and secondarily formed; the latter is the result of NO<sub>x</sub> and SO<sub>2</sub> precursors combining with ammonia to form ammonium nitrate and ammonium sulfate.

startup, shutdown, or malfunction (SSM) of operations at a facility. EPA believes that a number of states have SSM SIP provisions that are contrary to the Act and inconsistent with existing EPA guidance,<sup>31</sup> and the Agency plans to conduct a SIP call in the future to address such SIP regulations. In the meantime, EPA encourages any state having an SSM SIP provision that is contrary to the Act and inconsistent with EPA guidance to take steps to correct the deficiency as soon as possible before a SIP call is implemented. Similarly, this proposed action does not include a review of, nor does it propose to, take any action to approve or disapprove any existing SIP rules with regard to director's discretion or variance provisions. EPA believes that a number of SIPs have such provisions that are contrary to the Act and not consistent with existing EPA guidance (52 FR 45044, November 24, 1987)<sup>32</sup> and the Agency plans to take action in the future to address such SIP regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision in its SIP that is contrary to the Act and inconsistent with EPA guidance to take steps to correct the deficiency as soon as possible.

A detailed list of the applicable Regulation 19, Regulation 26, and Regulation 31 chapters discussed above are provided in the TSD. Arkansas' SIP clearly contains enforceable emission limits and other control measures, which are in the federally enforceable SIP. EPA is proposing to find that the Arkansas SIP meets the requirements of section 110(a)(2)(A) of the Act with respect to the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Ambient air quality monitoring/data analysis system, pursuant to section 110(a)(2)(B):* Section 110(a)(2)(B) requires SIPs to include provisions for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. EPA approved Regulation 19, Chapter 3 into the SIP that makes ADEQ responsible for conducting ambient air monitoring in any area of the state that can be expected to be in excess of the NAAQS (65 FR 61103,

October 16, 2000). The ADEQ operates and maintains a statewide network of air quality monitors—data are collected, results are quality assured, and the data are submitted to EPA's Air Quality System<sup>33</sup> on a regular basis. Arkansas' Statewide Air Quality Surveillance Network was approved by EPA on August 6, 1981 (46 FR 40005), and consists of stations that measure ambient concentrations of the six criteria pollutants, including ozone and PM<sub>2.5</sub>. The Air Quality Surveillance Network undergoes annual review by EPA. On June 29, 2010, ADEQ submitted its 2010 Annual Air Monitoring Network Plan (AAMNP) that included the plans for the 1997 ozone and PM<sub>2.5</sub> NAAQS. EPA approved the AAMNP on January 20, 2011.<sup>34</sup> The ADEQ Web site provides the ozone and PM<sub>2.5</sub> monitor locations ([http://www.adeq.state.ar.us/air/branch\\_planning/monitoring.htm](http://www.adeq.state.ar.us/air/branch_planning/monitoring.htm)), as well as current data including air quality indices and concentrations for 8-hour ozone and PM<sub>2.5</sub> for the past 90 days (<http://www.adeq.state.ar.us/techsvs/dailyaqidata.asp#AQI>).

In summary, Arkansas meets the requirement to establish, operate, and maintain an ambient air monitoring network; collect and analyze the monitoring data; and make the data available to EPA upon request. EPA is proposing to find that the current Arkansas SIP meets the requirements of section 110(a)(2)(B) with respect to the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Program for enforcement of control measures and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program, as required by Parts C and D, pursuant to section 110(a)(2)(C):* As discussed previously, the AWAPCA provides the ADEQ with authority to enforce the state's environmental quality rules. The ADEQ established rules governing emissions of the NAAQS and their precursors throughout the state, and these rules are in the federally-enforceable SIP. The rules in Regulation 19, Chapters 1, 3–5, 7–10, 13 and 14; Regulation 26, Chapter 3; and Regulation 31, Chapters 1, 3, 4

and 8 include allowable rates, compliance, control plan requirements, actual and allowable emissions, monitoring and testing requirements, recordkeeping and reporting requirements, and control schedules. These rules clarify the boundaries beyond which regulated entities in Arkansas can expect enforcement action.

To meet the requirement for having a program for the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved—including a permit program as required by Parts C and D—generally, the state is required to have SIP-approved PSD, Nonattainment, and Minor NSR permitting programs adequate to implement the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS. We are not evaluating nonattainment-related provisions—such as the Nonattainment NSR program required by part D in 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs for these NAAQS—because these submittals are required beyond the date (3 years from NAAQS promulgation) that section 110 infrastructure submittals are required (see footnotes 1 and 19).

PSD programs apply in areas that are meeting the NAAQS, referred to as attainment areas, or in areas that are unclassifiable, referred to as unclassifiable/attainment areas. PSD applies to new major sources and major modifications at existing sources. EPA's PSD permitting regulations are found at 40 CFR 51.166 and 40 CFR 52.21. PSD requirements for SIPs are found in 40 CFR 51.166 and 40 CFR part 51 appendix W. Similar PSD requirements for SIPs incorporating EPA's regulations by reference are found in 40 CFR 52.21.

The Arkansas' PSD program was initially approved into the SIP on January 14, 1982 (47 FR 02112). Subsequent revisions to Arkansas' PSD program were approved into the SIP on February 10, 1986 (51 FR 04910), May 2, 1991 (56 FR 20137), October 16, 2000 (65 FR 61103), and April 12, 2007 (72 FR 18394). To meet the requirements of 110(a)(2)(C) for the 1997 ozone standard, EPA believes the state must have updated its PSD rules to treat NO<sub>x</sub> as a precursor for ozone (70 FR 71612, November 29, 2005). On February 17, 2010, Arkansas submitted the provisions for NO<sub>x</sub> as a precursor consistent with EPA's November 29, 2005 Phase 2 rule for the 1997 8-hour ozone NAAQS (70 FR 71612) as part of

<sup>31</sup> "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, dated September 20, 1999.

<sup>32</sup> The section addressing exemptions and variances is found on p. 45109 of the 1987 rulemaking.

<sup>33</sup> The Air Quality System (AQS) is EPA's repository of ambient air quality data. AQS stores data from over 10,000 monitors, 5,000 of which are currently active. State, Local and Tribal agencies collect the data and submit it to AQS on a periodic basis.

<sup>34</sup> A copy of our approval letter is in the docket for this rulemaking. At the time of this writing, the review of the 2011 AAMNP has not been completed.

its revisions to address NSR reform. EPA proposes to approve the following portions of the February 17, 2010 SIP revision to Regulation 19, Chapter 9: 1) the substantive change adding NO<sub>x</sub> to the definition of *Major Modification* through incorporation by reference of 40 CFR 52.21(b) and 40 CFR 51.301 as of November 29, 2005; 2) the substantive change adding NO<sub>x</sub> to the definition of *Major Stationary Source* through incorporation by reference of 40 CFR 52.21(b) and 40 CFR 51.301 as of November 29, 2005; 3) the substantive change adding NO<sub>x</sub> as a precursor to the table's criteria and other pollutants listing for ozone through incorporation by reference of 40 CFR 52.21(b)(23)(i); and 4) the substantive change allowing for an exemption with respect to ozone monitoring for a source with a net emissions increase less than 100 tpy of NO<sub>x</sub> through incorporation by reference of 40 CFR 52.21(i)(5)(i).

The February 17, 2010 revisions to the definitions in the Arkansas rules for "major modification" and "major stationary source" meet the Federal definition in 40 CFR 52.21(b) to identify a major source of NO<sub>x</sub> as a major source for ozone. The February 17, 2010 revisions to the Arkansas rules also meet the Federal definition in 40 CFR 52.21(b)(50)(i) for inclusion of NO<sub>x</sub> as an ozone precursor. The February 17, 2010 revisions to the emissions rate for NO<sub>x</sub> under the definition for *Significant* in the Arkansas rules also meet the Federal requirements in 40 CFR 52.21(b)(23)(i), which establishes these emission thresholds as 40 tpy.<sup>35</sup> The February 17, 2010 revisions allowing for an exemption for ozone monitoring for a source with a net emissions increase less than 100 tpy of NO<sub>x</sub> also meet the Federal requirement on monitoring exemptions under the footnote for 40 CFR 52.21(i)(5)(i). Because of their consistency with 40 CFR 52.21, which provides the requirements for an approvable PSD program, EPA believes these revisions are consistent with 110(l) and the revisions would not interfere with any applicable standard. Therefore, EPA is proposing to approve these revisions as meeting the requirements of section 110 of the Act and 40 CFR 52.21 for establishing NO<sub>x</sub> emissions as a precursor for ozone.

<sup>35</sup> In a November 23, 2010 submission (received by EPA on December 1, 2010), Arkansas proposed revisions to its SIP that include, among other things, raising its emissions threshold for NO<sub>x</sub> from 25 tpy to 40 tpy. It is important to note that EPA is not proposing action at this time on that proposed revision, nor on any other part of Arkansas's November 23, 2010 submittal. We will take action on it in a separate rulemaking.

The revisions to Regulation 19, Chapter 9, and EPA's evaluation of these revisions are discussed in greater detail in the TSD. The provisions that address NO<sub>x</sub> as a precursor are severable from the remaining portions of the February 17, 2010 submittal, and EPA is proposing to approve these revisions in today's action.

To implement section 110(a)(2)(C) for the 1997 and 2006 PM<sub>2.5</sub> standards, states were required to submit SIP revisions for the implementation of the PSD and nonattainment NSR program for the PM<sub>2.5</sub> standard by May 16, 2011 (see 73 FR 28321, May 16, 2008). Because the State has failed to adopt and submit the required PM<sub>2.5</sub> PSD rules, we are proposing to find that the current Arkansas PSD SIP does not meet the requirements of section 110(a)(2)(C) with respect to the implementation of the PSD NSR program for the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

Section 110(a)(2)(C) creates "a general duty on States to include a program in their SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved" (70 FR 71612, 71677). This duty is often referred to as "minor NSR." EPA provides states with a "broad degree of discretion" in implementing their minor NSR programs (71 FR 48696, 48700). The "considerably less detailed" regulations for minor NSR are provided in 40 CFR 51.160 through 51.164. EPA has determined that Arkansas' minor NSR program, adopted pursuant to section 110(a)(2)(C) of the Act, regulates emissions of ozone and its precursors and PM. Arkansas' minor source permitting requirements are contained in Regulation 19, Chapter 4, and portions of Chapters 3 and 5, and were approved at 65 FR 61108.

It is important to stress that EPA is not proposing to approve or disapprove the state's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable

consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

As explained in section I.C.5 of this proposal, the current EPA-approved SIP PSD program does not apply to GHG-emitting sources that emit at or above the levels of emissions set in the Tailoring Rule, or at other appropriate levels. Thus, the Arkansas SIP does not satisfy this portion of section 110(a)(2)(C). We are proposing to disapprove this portion of the Arkansas SIP for failing to meet the infrastructure requirements for the 1997 ozone and the 1997 and 2006 PM<sub>2.5</sub> NAAQS with respect to the GHG requirement of section 110(a)(2)(C). EPA's disapproval here does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Arkansas PSD program to address permitting GHGs at or above the Tailoring Rule thresholds (75 FR 82246).

*Interstate transport, pursuant to section 110(a)(2)(D):* Section 110(a)(2)(D) has two components, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

*PSD and interstate transport, pursuant to section 110(a)(2)(D)(i):* One of the four prongs in section 110(a)(2)(D)(i) requires a SIP to contain adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality. This is the only element of 110(a)(2)(D)(i) for which EPA is proposing action in this rulemaking.

EPA's 2006 Guidance made recommendations for SIP submissions to meet this requirement with respect to both the 1997 8-hour ozone NAAQS and the 1997 PM<sub>2.5</sub> NAAQS.

The 2006 Guidance states that the PSD permitting program is the primary measure that each state must include to prevent interference with any other state's required measures to prevent significant deterioration of its air quality in accordance with section 110(a)(2)(D)(i)(II). EPA believes that Arkansas' December 17, 2007 and March 28, 2008 submissions, when

considered in conjunction with the State's PSD program and other PSD program revisions that EPA is proposing to approve in this action address, in part, the requirements of 110(a)(2)(D)(i)(II). The submittal states that all major sources in Arkansas are subject to PSD and nonattainment NSR permitting programs. As discussed previously in our analysis of section 110(a)(2)(C) and in the TSD, the State's PSD program is in the SIP (47 FR 02112, 51 FR 04910, 56 FR 20137, 65 FR 61103, and 72 FR 18394). We also note in our discussion of 110(a)(2)(C) that Arkansas does not have a PSD program to address permitting GHG emissions and Arkansas has not adopted necessary revisions to properly address permitting of PM<sub>2.5</sub> emissions. Please see the attached TSD and refer to our discussion of section 110(a)(2)(C) in this rulemaking for additional information.

Consistent with EPA's November 29, 2005 rulemaking, "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standards—Phase 2" (70 FR 71612), Arkansas submitted SIP revisions to modify its PSD provisions to address NO<sub>x</sub> as an ozone precursor. For the same reasons discussed in our analysis of section 110(a)(2)(C) of this proposed action, EPA believes that the PSD revision for the 1997 8-hour ozone NAAQS that makes NO<sub>x</sub> a precursor for ozone for PSD purposes, taken together with the PSD SIP and the interstate transport SIP, partially satisfies the requirements of the third prong of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS, *i.e.*, there will be no interference with any other state's required PSD measures. Arkansas only partially satisfies the requirements because of the deficiencies in its ability to permit sources of GHG emissions. Therefore, EPA is proposing partial approval and partial disapproval of the Arkansas SIP as it applies to section 110(a)(2)(D)(i) under the 1997 8-hour ozone NAAQS. EPA's disapproval here for the GHG emissions does not engender an additional statutory obligation, because EPA has already promulgated a FIP for the Arkansas PSD program to address permitting GHGs at or above the Tailoring Rule thresholds (75 FR 82246).

We are proposing to find that Arkansas does not meet the third prong of section 110(a)(2)(D)(i), because the current Arkansas PSD SIP does not meet the requirements of section 110(a)(2)(C) with respect to the implementation of the PSD NSR program for the 2006 PM<sub>2.5</sub> NAAQS because the state has not submitted the required PSD SIP revision to fully implement the PSD NSR

program for the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Interstate and international pollution abatement, pursuant to section 110(a)(2)(D)(ii):*

Section 110(a)(2)(D)(ii) of the Act requires compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Section 115 addresses endangerment of public health or welfare in foreign countries from pollution emitted in the United States. Pursuant to section 115(a), the Administrator has neither received nor issued a formal notification that emissions from Arkansas are endangering public health or welfare in a foreign country.

Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from such sources. Regulation 26, Chapter 6 requires that each major proposed new or modified source provide such notification and is in the federally enforceable SIP (see 66 FR 51312). The State also has no pending obligations under section 126 of the Act. For additional detail, please refer to the TSD. However, as previously noted in this rulemaking, Arkansas does not have a current EPA-approved SIP PSD program that applies to GHG-emitting sources that emit at or above the level of emissions set in the Tailoring Rule, or at other appropriate levels. Also, the State has failed to submit the required PSD NSR SIP revisions for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. Therefore, EPA is not proposing to approve Arkansas' interstate pollution abatement provisions in full because Arkansas cannot require each major proposed or modified new source to notify neighboring states of potential impacts from PM<sub>2.5</sub> and GHGs emitted by such sources.

*Adequate personnel, funding, and authority, pursuant to section 110(a)(2)(E):* The duties, powers and structure of the ADEQ (described in A.C.A. section 8–1–202) provide that the director is empowered to administer all activities "including, but not limited to the employment and supervision of such technical, legal, and administrative staff, within approved appropriations, as is necessary to carry out the responsibilities vested within the department". The AWAPCA provides the ADEQ adequate authority with the powers and duties, in part, "to administer and enforce all laws and regulations relating to pollution of the air." A.C.A. section 8–4–311(7). Furthermore, the ADEQ has the power and duty to "cooperate with and receive moneys from the Federal government or any other source for the study and

control of air pollution." A.C.A. section 8–4–311(9)(A).

There are Federal sources of funding for the implementation of the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS, through, for example, CAA sections 103 and 105 grant funds. The ADEQ receives Federal funds on an annual basis, under sections 103 and 105 of the Act, to support its air quality programs. Fees collected for the NSR permit programs, and other inspections, maintenance and renewals required of other air pollution sources also provide necessary funds to help implement the State's air programs. More specific information on permitting fees is provided in the discussion of section 110(a)(2)(L) below and in the TSD.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128. Section 128 requires: (1) that the majority of members of the state body that approves permits or enforcement orders do not derive any significant portion of their income from entities subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such body be adequately disclosed. In 1982, the EPA approved the state's submittal to demonstrate compliance of the SIP with Section 128 of the CAA (47 FR 19136). The submittal cited AWAPCA Section 82–1901 as demonstrating compliance with CAA Section 128(a)(1), and cited Arkansas Code of Ethics Law, Act 570 of 1979 as addressing CAA Section 128(a)(2). See Arkansas Code of Ethics Law, Act 570 of 1979, Section 3: Use of Public Office to Obtain Special Privilege Prohibited; Section 4: Use and Disclosure of Information Acquired by Reason of Office—Activities Requiring Disclosure; Section 5: Requirement to File Statement; and Section 6: Statements—Period Retained—Public Access—Signature Required.

EPA is proposing to find that the current Arkansas PSD SIP meets section 110(a)(2)(E) with respect to the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Stationary source monitoring system, pursuant to section 110(a)(2)(F):* Regulation 19, chapters 2–4, 7–10, and 13 require that stationary sources monitor for compliance, provide recordkeeping and reporting, and provide for enforcement of ozone standards, PM<sub>2.5</sub> standards, and precursors to these pollutants (*e.g.*, NO<sub>x</sub>, SO<sub>2</sub>, and VOCs). These source monitoring requirements also generate data for these pollutants.

Under the Arkansas SIP, the ADEQ is required to analyze the emissions data from point, area, mobile, and biogenic (natural) sources. The ADEQ uses this

data to track progress toward maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with Arkansas and EPA requirements. The State's emissions data are available on the ADEQ Web site (<http://www.adeg.state.ar.us>) and EPA's AirData Web site ([www.epa.gov/air/data/index.html](http://www.epa.gov/air/data/index.html)).<sup>36</sup> These rules are in the federally-approved SIP. A list of the chapters and **Federal Register** citations is provided in the TSD.

EPA is proposing to find that the Arkansas SIP meets the requirements of section 110(a)(2)(F) with respect to the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Emergency power, pursuant to section 110(a)(2)(G):* 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 AWAPCA, pursuant to A.C.A. sections 8–1–202(b)(2)(C) and 8–4–202(e)(1), provides the ADEQ with authority to address environmental emergencies, and the ADEQ has contingency plans to implement emergency episode provisions in the SIP. The ADEQ promulgated the “Prevention of Air Pollution Emergency Episodes,” which includes contingency measures, and these provisions were approved into the SIP on May 31, 1972 (37 FR 10850). The criteria for ozone are based on a 1-hour average ozone level. These episode criteria and contingency measures are adequate to address ozone emergency episodes and are in the federally-approved SIP.

The 2009 Infrastructure SIP Guidance for PM<sub>2.5</sub> recommends that a state with at least one monitored 24-hour PM<sub>2.5</sub> value exceeding 140.4 µg/m<sup>3</sup> since 2006 establishes an emergency episode plan and contingency measures to be implemented if such level is exceeded again. The 2006–2010 ambient air quality monitoring data<sup>37</sup> for Arkansas do not exceed 140.4 µg/m<sup>3</sup>. The PM<sub>2.5</sub> levels have consistently remained below 140.4 µg/m<sup>3</sup>. Furthermore, the State has appropriate general emergency powers to address PM<sub>2.5</sub> related episodes to protect the environment and public health. Given the State's low monitored PM<sub>2.5</sub> levels, EPA is proposing the State

is not required to submit an emergency episode plan and contingency measures at this time for the 1997 and 2006 PM<sub>2.5</sub> standards. Additional detail is provided in the TSD.

EPA is proposing to find that the Arkansas SIP meets the requirements of section 110(a)(2)(G) with respect to the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Future SIP revisions, pursuant to section 110(a)(2)(H):* The AWAPCA, Section 82–1935(1), empowers the APCEC to “formulate and promulgate, amend, repeal, and enforce rules and regulations implementing or effectuating the powers and duties of the Commission [\* \* \*] to control air pollution”. In addition, A.C.A. 8–4–202(d)(4)(A) authorizes the Commission to “refer to the CFR for regulations and standards identical to those sanctioned by EPA.” Thus, Arkansas has the authority to revise its SIP from time to time as may be necessary to take into account revisions of primary or secondary NAAQS, or the availability of improved or more expeditious methods of attaining such standards. Furthermore, Arkansas also has the authority under these AWAPCA provisions to revise its SIP in the event the EPA pursuant to the Act finds the SIP to be substantially inadequate to attain the NAAQS.

EPA is proposing to find that the Arkansas SIP meets the requirements of section 110(a)(2)(H) with respect to the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Consultation with government officials, pursuant to section 110(a)(2)(I):*<sup>38</sup> The AWAPCA, as codified under A.C.A. section 8–1–203 provides that the APCEC “shall meet regularly in publicly noticed open meetings to discuss and rule upon matters of environmental concern” prior to the adoption of any rule or regulation implementing the substantive statutes charged to the ADEQ for administration. In addition, A.C.A. section 8–4–311 provides that the ADEQ or its successor shall have the power and duty “to advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the Federal government, and with affected groups in the furtherance of the purposes of this chapter.” Further, Regulation 19.904(D) provides that ADEQ shall make determinations that a source may affect air quality or visibility in a mandatory Class I Federal area

based on screening criteria agreed upon by the Department and the Federal Land Manager (see 72 FR 18394). These rules are in the federally approved SIP. EPA is proposing to find that the Arkansas SIP meets the requirements of this portion of section 110(a)(2)(I) with respect to the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Public notification if NAAQS are exceeded, pursuant to section 110(a)(2)(J):* Public notification begins with the air quality forecasts, which advise the public of conditions capable of exceeding the 8-hour ozone<sup>39</sup> and PM<sub>2.5</sub> NAAQS. The air quality forecasts can be found on the ADEQ Web site: for 8-hour ozone and PM<sub>2.5</sub>, the forecast includes 2 regions<sup>40</sup> in the State. Ozone forecasts are made daily during the ozone season for each of the forecast areas.<sup>41</sup> The ozone forecasts are made, in most cases, a day in advance by 2 p.m. local time and are valid for the next day. When the forecast indicates that ozone levels will be above the 8-hour ozone standard, the ADEQ and the Arkansas Department of Health issue an Ozone Health Advisory.

In addition, the State implements an Ozone Action Day (OAD) program<sup>42</sup> and will issue an ozone alert in the afternoon on the day before an elevated level of ozone is expected to occur. Announcements for an OAD will be broadcast through television and other news media, and to employers participating in the OAD program. The OAD program includes examples of actions that can be implemented by individuals and organizations to reduce ozone levels and exposure to ozone. Also through the Metroplan Web site, the public can subscribe to an electronic information system that provides air quality forecast and ozone alert information via email. Ozone data are posted on the ADEQ Web site; current, regional hourly and regional 8-hour ozone data are posted hourly (see <http://www.adeg.state.ar.us/techsvs/ozonemonitors.asp>). EPA is proposing

<sup>39</sup> The ADEQ forecasts for 8-hour ozone are based on the 2008 ozone standard, which is 75 ppb.

<sup>40</sup> The 2 forecast areas for 8-hour ozone and PM<sub>2.5</sub> are Little Rock and Springdale. See [www.adeg.state.ar.us/techsvs/default.htm](http://www.adeg.state.ar.us/techsvs/default.htm).

<sup>41</sup> Ozone is a gas composed of three oxygen atoms. Ground level ozone is generally not emitted directly from a vehicle's exhaust or an industrial smokestack, but is created by a chemical reaction between NO<sub>x</sub> and VOCs in the presence of sunlight and high ambient temperatures. Thus, ozone is known primarily as a summertime air pollutant. For Arkansas, the ozone season runs from March 1 through November 31 (see 40 CFR 58, Appendix D, Table D–3). The Arkansas air quality control regions are defined at 45 FR 6571 (January 29, 1980).

<sup>42</sup> For coordinating agencies, participating counties and other information, please see <http://www.adeg.state.ar.us/air/ozone/ozonedays.asp>.

<sup>36</sup> The AirData Web site provides access to air pollution data for the entire United States and produces reports and maps of air pollution data based on criteria specified by the user.

<sup>37</sup> The ozone and PM data are available through AQS. The AQS data for PM are provided in the docket for this rulemaking.

<sup>38</sup> Section 110(a)(2)(J) is divided into three segments: Consultation with government officials; public notification; and PSD and visibility protection.

to find that the Arkansas SIP meets this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*PSD and visibility protection, pursuant to section 110(a)(2)(J):* This portion of section 110(a)(2)(J) in part requires that a state's SIP meet the applicable requirements of section 110(a)(2)(C) as relating to PSD programs. As discussed in our section 110(a)(2)(C) analysis and in the TSD, the State's PSD program is in the SIP (47 FR 02112, 51 FR 04910, 56 FR 20137, 65 FR 61103 and 72 FR 18394). In addition to the approved program and to meet the requirements of 110(a)(2)(C) and 110(a)(2)(D)(i) for the 1997 ozone standard, EPA believes the State must have updated its PSD rules to treat NO<sub>x</sub> as a precursor for ozone. Thus, we are proposing to approve portions of a SIP revision (submitted February 17, 2010) to implement NO<sub>x</sub> as a precursor to ozone. These revisions are proposed for APCEC Regulation 19, Chapter 9, as described above.

For Arkansas to meet the requirements of the PSD portion of section 110(a)(2)(J), it must comply with section 110(a)(2)(C).<sup>43</sup> To implement section 110(a)(2)(C) for the 1997 and 2006 PM<sub>2.5</sub> standards, states were required to submit PSD NSR SIP revisions for the PM<sub>2.5</sub> standards by May 16, 2011 (73 FR 28321, May 16, 2008). At present, Arkansas has not submitted revisions to satisfy this requirement. Therefore, Arkansas fails to meet the requirements of section 110(a)(2)(C) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. We are proposing to find that the current Arkansas PSD SIP does not meet the requirements of section 110(a)(2)(J) with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

Moreover, as stated in our discussion of the PSD program under section 110(a)(2)(C), the current EPA-approved SIP PSD program does not apply to GHG-emitting sources that emit at or above the levels of emissions set in the Tailoring Rule, or at other appropriate levels. Thus, the Arkansas SIP does not satisfy the portion of section 110(a)(2)(J) that relates to permitting GHGs with respect to the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS. EPA's disapproval here does not engender any additional statutory obligation, because EPA has already promulgated a FIP for the Arkansas PSD program related to permitting GHGs at or above the Tailoring Rule thresholds (75 FR 82246).

<sup>43</sup>CAA Section 110(a)(2)(J) requires, among other things, that each implementation plan "meet[s] the applicable requirements of [110(a)(2)(C)]."

EPA approved Arkansas' Visibility Protection Plan (Protection of Visibility in Mandatory Class I Federal Areas) into the Arkansas SIP on February 10, 1986 (51 FR 4910). EPA approved revisions to the Arkansas Visibility Protection Plan and approved a Long-Term Strategy for Visibility Protection into the Arkansas SIP on July 21, 1988 (53 FR 27514). The State's most recent SIP revision of their Regional Haze program was submitted to EPA on July 29, 2008, and we will take action on it in a separate rulemaking. With regard to the applicable requirements for visibility protection, EPA recognizes that States are subject to visibility and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary PM<sub>2.5</sub> NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C. EPA is therefore proposing to find that the Arkansas SIP meets this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

EPA is proposing to find that the Arkansas SIP meets the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 8-hour ozone NAAQS with the exception of section 110(a)(2)(J) as it relates to the GHG component of the PSD program. EPA is proposing to find that the Arkansas SIP does not meet the requirements of section 110(a)(2)(J) as it relates to the GHG component of the PSD program with respect to the 1997 8-hour ozone NAAQS. EPA is also proposing to find that the Arkansas SIP does not meet the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS because the state has not submitted the required PSD SIP revision to fully implement the PSD NSR program for the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Air quality modeling and submission of data, pursuant to section 110(a)(2)(K):* The AWAPCA prescribes at A.C.A. section 8-4-311(a)(1) that the ADEQ shall "[d]evelop and effectuate a comprehensive program for the prevention and control of all sources of pollution of the air of this state." Arkansas has extensive modeling in numerous submitted SIP revisions. For example, Arkansas submitted modeling

in SIP revisions for implementing an Economic Development Zone in Crittenden County, and demonstrating maintenance of the 1997 8-hour ozone standard in Crittenden County. EPA approved the modeling as part of the Arkansas SIP.<sup>44</sup>

This section of the Act also requires that a SIP provides for the submission of data related to such air quality modeling to the EPA upon request. A.C.A. section 8-4-311 authorizes ADEQ to cooperate with the Federal government, allowing it to make this submission to the EPA.

EPA is proposing to find that the Arkansas SIP meets the requirements of section 110(a)(2)(K) with respect to the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Permitting fees, pursuant to section 110(a)(2)(L):* The AWAPCA, as codified in Regulation 9, Chapter 5 provides authority for the ADEQ to charge and collect fees for Title V and non-Title V permit applications, revisions, renewals, and inspections. The non-Title V rules that address permit fees found in APCEC Regulation 9, Chapter 5 are in the federally-approved SIP. A detailed list of the applicable chapters listed herein is provided in the TSD. EPA is proposing to find that the Arkansas SIP meets the requirements of section 110(a)(2)(L) with respect to the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*Consultation/participation by affected local entities, pursuant to section 110(a)(2)(M):* As indicated above, the Arkansas statute under A.C.A. section 8-1-203 provides that the APCEC "shall meet regularly in publicly noticed open meetings to discuss and rule upon matters of environmental concern" prior to the adoption of any rule or regulation implementing the substantive statutes charged to the ADEQ for administration. In addition, AWAPCA Section 82-1935 empowers the APCEC to develop and put into effect a comprehensive program for the prevention and control of all sources of pollution in the air in the state. The State has the power to advise, consult and cooperate with other agencies of the State, political subdivisions, other states, the Federal government, and with affected groups. EPA is proposing to find that the Arkansas SIP meets the requirements of section 110(a)(2)(M) with respect to the

<sup>44</sup> See the Economic Development Zone implementation for the Crittenden County 1997 8-hour O<sub>3</sub> nonattainment area, approved by EPA and adopted into the SIP on April 12, 2007 (72 FR 18394), and the Crittenden County 1997 8-hour O<sub>3</sub> maintenance plan, approved by EPA and adopted into the SIP on March 24, 2010 (75 FR 14077).

1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS.

#### IV. Proposed Action

We are proposing to partially approve and partially disapprove the submittals provided by the State of Arkansas to demonstrate that the Arkansas SIP meets the requirements of Section 110(a)(1) and (2) of the Act for the 1997 ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS. For the 1997 ozone standard, we are proposing to find that the current Arkansas SIP meets the infrastructure elements listed below:

Emission limits and other control measures (110(a)(2)(A) of the Act);

Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

Program for enforcement of control measures (110(a)(2)(C) of the Act), except for the portion that addresses GHGs;

Interstate Transport, pursuant to section (110(a)(2)(D)(ii) of the Act), except for the portion that addresses GHGs;

Adequate resources (110(a)(2)(E) of the Act);

Stationary source monitoring system (110(a)(2)(F) of the Act);

Emergency power (110(a)(2)(G) of the Act);

Future SIP revisions (110(a)(2)(H) of the Act);

Consultation with government officials (110(a)(2)(J) of the Act);

Public notification (110(a)(2)(I) of the Act);

Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act), except for the portion that addresses GHGs;

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

For the 1997 ozone standard, we are proposing to find that the current Arkansas SIP does not meet the infrastructure elements listed below:

Program for enforcement of control measures (110(a)(2)(C) of the Act), only as it relates to GHGs;

Interstate transport, pursuant to section 110(a)(2)(D)(ii) of the Act, only as it relates to GHGs; and

Prevention of significant deterioration (110(a)(2)(J) of the Act), only as it relates to GHGs.

We are also proposing to approve the Arkansas Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from sources in Arkansas do not interfere with measures required in the SIP of any other state under part C

of the CAA to prevent significant deterioration of air quality, except as they relate to GHGs for the 1997 ozone NAAQS.

We are proposing to disapprove the portion of the Arkansas Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II), as it relates to GHGs, that emissions from sources in Arkansas do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration of air quality, for the 1997 ozone NAAQS.

For the 1997 and 2006 PM<sub>2.5</sub> standards, we are proposing to find that the current Arkansas SIP meets the infrastructure elements listed below:

Emission limits and other control measures (110(a)(2)(A) of the Act);

Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

Adequate resources (110(a)(2)(E) of the Act);

Stationary source monitoring system (110(a)(2)(F) of the Act);

Emergency power (110(a)(2)(G) of the Act);

Future SIP revisions (110(a)(2)(H) of the Act);

Consultation with government officials (110(a)(2)(J) of the Act);

Public notification (110(a)(2)(I) of the Act);

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

For the 1997 and 2006 PM<sub>2.5</sub> standards, we are proposing to find that the current Arkansas SIP does not address the 110(a)(2) infrastructure elements listed below:

Program for enforcement of control measures (110(a)(2)(C) of the Act);

Interstate Transport, pursuant to section 110(a)(2)(D)(ii) of the Act; and

Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act).

We are also proposing to disapprove the portion of the Arkansas Interstate Transport SIP that addresses the requirement of section 110(a)(2)(D)(i)(II)—that emissions from sources in Arkansas do not interfere with measures required in the SIP of any other state under part C of the CAA to prevent significant deterioration of air quality—for the 2006 PM<sub>2.5</sub> NAAQS.

EPA is also proposing to approve the following revisions to APCEC Regulation 19, Chapter 9, submitted by the State of Arkansas on February 17, 2010:

1. The substantive change adding NO<sub>x</sub> to the definition of *Major*

*Modification* through incorporation by reference of 40 CFR 52.21(b) and 40 CFR 51.301 as of November 29, 2005.

2. The substantive change adding NO<sub>x</sub> to the definition of *Major Stationary Source* through incorporation by reference of 40 CFR 52.21(b) and 40 CFR 51.301 as of November 29, 2005.

3. The substantive change adding NO<sub>x</sub> as a precursor to the table's criteria and other pollutants listing for ozone through incorporation by reference of 40 CFR 52.21(b)(23)(i).

4. The substantive change allowing for an exemption with respect to ozone monitoring for a source with a net emissions increase less than 100 tpy of NO<sub>x</sub> through incorporation by reference of 40 CFR 52.21(i)(5)(i).

EPA is proposing these actions in accordance with section 110 and part C of the Act and EPA's regulations and consistent with EPA guidance. We are also proposing to make ministerial corrections to the attainment status table in 40 CFR 81.304 to accurately reflect the redesignation date of Crittenden County, Arkansas to attainment for the 1997 8-hour ozone standard. On March 24, 2010, we redesignated the county with an effective date of April 23, 2010 (75 FR 14077).

#### V. 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. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

##### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

##### B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the

SIP. Burden is defined at 5 CFR 1320.3(b).

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

### D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA

has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

### F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the action EPA is proposing neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. Therefore, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this rule. Consistent with EPA policy, EPA nonetheless is offering consultation to Tribes regarding this rulemaking action. EPA will respond to relevant comments in the final rulemaking action.

### G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

### H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

### I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent

practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

#### K. Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

#### List of Subjects in 40 CFR Part 52

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

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

Dated: January 30, 2012.

**Al Armendariz,**

*Regional Administrator, Region 6.*

[FR Doc. 2012-2902 Filed 2-8-12; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2009-0730; FRL-9629-2]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin; Redesignation of the Milwaukee-Racine and Sheboygan Areas to Attainment for 1997 8-Hour Ozone Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve requests from the Wisconsin

Department of Natural Resources (WDNR) to redesignate the Milwaukee-Racine and Sheboygan areas to attainment for the 1997 8-hour ozone standard, because the requests meet the statutory requirements for redesignation under the Clean Air Act (CAA or Act). The Milwaukee-Racine area includes Milwaukee, Ozaukee, Racine, Washington, Waukesha, and Kenosha Counties. The Sheboygan area includes Sheboygan County. WDNR submitted these requests on September 11, 2009, and supplemented the submittal on November 16, 2011. This proposed approval also involves several related actions. EPA is proposing to approve, as revisions to the Wisconsin State Implementation Plan (SIP), the state's plans for maintaining the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) through 2022 in the above-mentioned areas. EPA is also proposing to approve the 2005 comprehensive emissions inventories for the Milwaukee-Racine and Sheboygan areas as meeting the requirements of the CAA. Finally, EPA finds adequate and is proposing to approve the state's 2015 and 2022 Motor Vehicle Emission Budgets (MVEBs) for the Milwaukee-Racine and Sheboygan areas.

**DATES:** Comments must be received on or before March 12, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0730, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email:* [Aburano.Douglas@epa.gov](mailto:Aburano.Douglas@epa.gov).

3. *Fax:* (312) 408-2279.

4. *Mail:* Doug Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand delivery:* Doug Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2009-0730. 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](http://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 information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://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](http://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 instructions on submitting comments, go to Section I of this document, "What Should I Consider as I Prepare My Comments for EPA?"

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886-1767 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental