

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
<b>1124 Control of Volatile Organic Compound Emissions</b>				
* Section 2.0 .....	* Definitions .....	* 4/11/10	* 9/25/12 [Insert page number where the document begins].	* Amended to add definitions.
* Section 12.0 .....	* Surface Coating of Plastic Parts .....	* 10/11/11	* 9/25/12 [Insert page number where the document begins].	* 
* Section 19.0 .....	* Coating of Metal Furniture .....	* 10/11/11	* 9/25/12 [Insert page number where the document begins].	* 
* Section 20.0 .....	* Coating of Large Appliances .....	* 10/11/11	* 9/25/12 [Insert page number where the document begins].	* 
* Section 22.0 .....	* Coating of Miscellaneous Metal Parts ...	* 10/11/11	* 9/25/12 [Insert page number where the document begins].	* 
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[FR Doc. 2012-23495 Filed 9-24-12; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2010-0159; FRL-9731-9]

**Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving submittals from the Commonwealth of Pennsylvania pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance and enforcement of such NAAQS. The plan is required to address basic program elements including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. Pennsylvania has made submittals

addressing the infrastructure requirements for the 1997 8-hour ozone and fine particulate matter (PM<sub>2.5</sub>) NAAQS and the 2006 PM<sub>2.5</sub> NAAQS. This action approves those submittals, or portions thereof.

**DATES:** This final rule is effective on October 25, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-0159. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Ruth Knapp, (215) 814-2191, or by email at [knapp.ruth@epa.gov](mailto:knapp.ruth@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever

“we,” “us,” or “our” is used, we mean EPA.

**I. Background**

On September 1, 2011 (76 FR 54410), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania’s submittals that provide the infrastructure elements specified in CAA section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS and the 2006 PM<sub>2.5</sub> NAAQS. The submittals by the Commonwealth of Pennsylvania dated December 7, 2007 and June 6, 2008 addressed the section 110(a)(2) requirements for the 1997 8-hour ozone NAAQS. The submittals dated December 7, 2007, June 6, 2008, and April 26, 2010 addressed the section 110(a)(2) requirements for the 1997 PM<sub>2.5</sub> NAAQS. Finally, the submittals dated April 26, 2010 and May 24, 2011 addressed the section 110(a)(2) requirements for the 2006 PM<sub>2.5</sub> NAAQS.

**II. Summary of SIP Revision**

The submittals referenced in the Background section above address the infrastructure elements specified in CAA section 110(a)(2) as applicable. These submittals provide for the implementation, maintenance, and enforcement of the 1997 8-hour ozone NAAQS, the 1997 PM<sub>2.5</sub> NAAQS, and the 2006 PM<sub>2.5</sub> NAAQS. The rationale supporting EPA’s proposed action

including the scope of infrastructure SIPs in general is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available online at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2010-0159. On October 3, 2011, EPA received public comments on its September 1, 2011 NPR from the Clean Air Council and the Sierra Club (referred to herein as Commenter). A summary of the comments submitted and EPA's responses are provided in Section III of this action.

### III. Summary of Public Comments and EPA Responses

*Comment:* The Commenter raises concerns relating to Pennsylvania's ambient air monitoring system. According to the Commenter, "The current monitoring system does not account for the Marcellus Shale industry and therefore the ambient air quality monitoring plan is inadequate to monitor, collect and analyze the NAAQS." The Commenter provides descriptions of one study and one event to support a general concern that "impacts of oil and gas development on air quality are by no means insignificant." The Commenter does not identify any specific Federally enforceable air quality monitoring requirement with which Pennsylvania's monitoring system fails to comply for either the 1997 ozone NAAQS or for the 1997 or 2006 PM<sub>2.5</sub> NAAQS.

*Response:* EPA disagrees with the Commenter concerning the statutory infrastructure requirements for monitoring. The infrastructure requirement at issue is set forth at CAA section 110(a)(2)(B)(i) and requires that, for each NAAQS at issue, Pennsylvania's SIP must "provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality \* \* \*" EPA has documented in the TSD and the administrative record supporting the rulemaking that Pennsylvania has met this statutory requirement. In the course of evaluating the submittals, EPA confirmed that the Commonwealth has met the monitoring requirements for the 1997 ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS. Pennsylvania has three Federally approved air quality monitoring plans. The Pennsylvania Department of Environmental Protection (PADEP) establishes, operates and maintains a network of ambient air monitors throughout Pennsylvania, excluding Philadelphia and Allegheny Counties. Both Philadelphia Air Management

Services (AMS) and the Allegheny County Health Department (ACHD) operate separate air monitoring networks and collect data pursuant to the Federally approved monitoring plans within these areas. Each annual monitoring network plan is made available for public inspection for at least 30 days prior to submission to EPA. See 40 CFR 58.10(a)(1). Additionally, as required in 40 CFR 58.10, each state is required to submit an annual network design plan to the EPA Regional Administrator by July 1 of each year. The most recent monitoring plans approved by EPA were submitted by PADEP on August 4, 2011, by AMS on July 1, 2011 and by ACHD on July 1, 2011. EPA approved each of these plans and notified the appropriate entity of the approval on December 6, 2011. These approval letters may be found in the docket supporting this action. The Commenter raises no issue as to whether the regulatory requirements set forth in 40 CFR Part 58, Subpart B have been met or whether the public has had opportunities to submit comments on each annual network plan or modifications to such plans in accordance with 40 CFR 58.14. Rather, the Commenter seems to request EPA to expand the statutory requirement for the infrastructure SIP set forth in CAA section 110(a)(2)(B) to include air quality monitoring criteria for a specific industry that goes beyond the current regulatory requirements for monitoring networks for ozone and PM<sub>2.5</sub>. EPA continues to believe that the relevant ambient air quality monitoring and data systems in Pennsylvania meet the statutory requirement that a state's SIP must provide for the establishment and operation of appropriate devices, methods, systems and procedures to monitor, compile and analyze data on ambient air quality because the monitoring network meets current regulatory requirements and is consistent with applicable EPA guidance. The Commenter may submit comments and suggestions concerning the monitoring networks in another more appropriate forum by submitting comments on future annual monitoring network plan submissions prepared by PADEP, AMS or ACHD which are open to public comment prior to being submitted to EPA.

*Comment:* After summarizing the statutory language of CAA section 110(a)(2)(C), the Commenter raises concerns about Pennsylvania's current permitting program and states that, "The current permitting program is inadequate to assure that the NAAQS are achieved because it exempts all

engines less than 100 horsepower associated with oil and gas industry." In support of this general concern, the Commenter cites to 25 Pa. Code section 127.14 (relating to exemptions) and states, "PADEP may determine sources or classes of sources to be exempt from the plan approval and permitting requirements of 25 Pa. Code Chapter 127 (relating to construction, modification, reactivation, and operation of sources)." The Commenter asserts that, "The blanket exemption for oil and gas exploration and production facilities and operation except for gas compressor station engines equal to or greater than 100 HP or gas extraction wells at landfills is inconsistent with the CAA." The Commenter also raises concerns relating to ozone maintenance plans that were submitted by Pennsylvania in accordance with a separate statutory requirement. The Commenter claims such plans are inadequate due to recent gas and oil activity.

*Response:* The comments at issue acknowledge that Pennsylvania has a program as described by CAA section 110(a)(2)(C) which is "a program to provide for the \* \* \* regulation of the modification and construction of any stationary source within [Pennsylvania] as necessary to assure that the NAAQS are achieved." The comments focus on the adequacy of such a program, rather than the existence of such a program. The Commenter's conclusory statements that specific exemptions in Pennsylvania's regulations governing the modification and construction of air contamination sources cause the program to be "inadequate to assure that the NAAQS are achieved" are not supported by any data. The Commenter asserts without any support that, in order to assure that the NAAQS are achieved, Pennsylvania should not exempt gas compressor stations engines less than 100 HP or gas extraction wells at landfills. However, the Commenter has not provided, and EPA is not aware of, any data indicating that, as a direct result of the exemption set forth at 25 Pa. Code section 127.14, there is an area of Pennsylvania that is not achieving any NAAQS at issue (the 1997 PM<sub>2.5</sub> NAAQS, 1997 ozone NAAQS and the 2006 PM<sub>2.5</sub> NAAQS). EPA has no data indicating that the emissions from the activities subject to the cited exemption are preventing Pennsylvania from achieving any NAAQS at issue. The Commenter has not provided sufficient information to support a conclusion that the cited exemption is "inconsistent with the CAA." Furthermore, although the Commenter raises concerns about

ozone maintenance plans, which have been previously approved by EPA, the Commenter does not explain how such SIP approved maintenance plans relate to Pennsylvania's compliance with CAA 110(a)(2)(A) or (C) for the NAAQS at issue. Ozone maintenance plans are approved by EPA pursuant to CAA section 175A. These plans were subject to public notice and comment as part of EPA's approval process. The proper forum to raise concerns relating to such plans would have been during such public comment periods. These maintenance plans are not subject to review and comment during this agency action. EPA disagrees with any assertion that the SIP approved ozone maintenance plans referred to by the Commenter provide adequate justification for finding that Pennsylvania has failed to meet its obligations for the 1997 ozone and PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> NAAQS pursuant to CAA section 110(a)(2)(A) and (C).

Pennsylvania's plan approval requirements for new sources or modifications at existing sources are included in its SIP. On July 30, 1996, EPA approved Pennsylvania's Minor New Source Review (NSR) program into its SIP. See 61 FR 39597. The Commonwealth and EPA have relied on the existing state NSR program to assure that new and modified sources do not interfere with attainment and maintenance of the NAAQS. EPA has determined that Pennsylvania's minor NSR program adopted pursuant to CAA section 110(a)(2)(C) regulates emissions of PM<sub>2.5</sub> and ozone and their precursors. For the 1997 PM<sub>2.5</sub>, 1997 ozone and 2006 PM<sub>2.5</sub> NAAQS, Pennsylvania's NSR program meets the statutory requirement that a state include in its SIP "a program to provide for the \* \* \* regulation of the modification and construction of any stationary source within [Pennsylvania] as necessary to assure that the NAAQS are achieved."

In this action, EPA is approving Pennsylvania's infrastructure SIPs for the 1997 PM<sub>2.5</sub> and ozone NAAQS and the 2006 PM<sub>2.5</sub> NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Even in those situations where EPA has identified that a state's minor NSR provisions may be contrary to the existing EPA regulations, EPA has repeatedly taken the position that, as part of infrastructure SIP approvals, EPA is not proposing to approve or disapprove a state's existing minor NSR program itself to the extent that it is or may be inconsistent with EPA's

regulations governing this program. EPA has indicated that it intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. EPA has taken this position because the statutory requirements of CAA 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs. The SIP provision cited by the Commenter (25 Pa. Code section 127.14) is not inconsistent with EPA's NSR regulatory provisions and is not inconsistent with the statutory requirements of section CAA 110(a)(2)(C). EPA believes that, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources, Pennsylvania should be given an appropriate level of flexibility to design a program that meets its particular air quality concerns. EPA will continue to monitor Pennsylvania's NSR program to ensure that this program regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

*Comment:* The Commenter expresses concern that "PADEP requires little to no monitoring or reporting for criteria and hazardous air pollutants associated with the drilling, extracting, and processing of natural gas from the Marcellus Shale" and asserts that these alleged monitoring or reporting deficiencies are the result of PADEP's failure to aggregate sources in accordance with requirements in NSR, Prevention of Significant Deterioration (PSD), and Title V of the CAA. The Commenter refers to the September 22, 2009 Memo from Gina McCarthy, Assistant Administrator for the EPA's Office of Air and Radiation, "Withdrawal of Source Determinations for Oil and Gas Industries." The Commenter states that, as part of the Commenter's review of thirty plan approval files in 2011, it found only three aggregation analyses by PADEP and asserts that PADEP should conduct such analyses on every plan approval application.

*Response:* The statutory requirement, CAA section 110(a)(2)(F), at issue as cited by the Commenter requires that each SIP for each NAAQS "require, as may be prescribed by the Administrator—(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State

agency with any emissions limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection." See CAA section 110(a)(2)(F). EPA disagrees with the Commenter's statements under section 110(a)(2)(F) which are related to source determinations under Pennsylvania's NSR, PSD and Title V programs. The narrow issue raised by the Commenter relates to implementation of Pennsylvania's Federally approved program. The issue raised goes beyond the basic statutory requirements of CAA section 110(a)(2)(F) that, as part of its SIP, the Commonwealth include certain general requirements. Pennsylvania incorporates by reference the Federal PSD regulations and has a SIP approved NSR program. Therefore, EPA believes there is no question that the Commonwealth meets this general statutory requirement. EPA's administrative record, including the TSD for this action, provides sufficient support for the finding that Pennsylvania's SIP for each of the relevant NAAQS meets the statutory requirement set forth at CAA section 110(a)(2)(F).

*Comment:* The Commenter states that PADEP does not have enough personnel to properly implement its SIP. The Commenter relies upon an undated Clean Water Action report which summarizes the reduction in PADEP's overall budget during the period of 2000 through 2011. The Commenter also relies upon an April 13, 2011 local newspaper article reporting that four Pennsylvania environmental regulators indicated that they "spend as little as 35 minutes reviewing each of the thousands of applications for natural gas well permits \* \* \*"

*Response:* EPA understands the concern that reductions in a state's budget may impede the state's ability to fulfill its obligations. However, a reduction in a state's budget allocated to environmental protection is by itself an insufficient basis for finding that a state has failed to meet its statutory obligations to "provide (i) necessary assurances that the State \* \* \* will have adequate personnel, funding, and authority under State law to carry out such implementation plan \* \* \*" See CAA section 110(a)(2)(E)(i). The administrative record for this action identifies several funding sources including Title V permit fees, federal funds under CAA sections 105 and 103 and funds from the Clean Air Fund and supports a finding that Pennsylvania has provided EPA with such assurances that it has adequate personnel and funding to carry out its SIP. If, in the

future, EPA determines that the Commonwealth does not have adequate personnel or funding to carry out its SIP, or for any other reason fails to meet any requirement of its approved SIP, then EPA may exercise its authority pursuant to CAA sections 110(a)(2)(E), 179 or 110(k)(5). The action that EPA is taking today does not limit EPA's authority pursuant to those CAA sections.

*Comment:* The Commenter expresses concern that "PA DEP does not have an adequate plan to deal with the emergency situations associated with Marcellus Shale operations." The Commenter relies upon an Internet news article and its experience of receiving complaints from citizens living near natural gas operations.

*Response:* EPA disagrees with the Commenter and believes Pennsylvania has met the requirements of CAA section 110(a)(2)(G). The Commenter raises a general concern regarding general emergency situations, including those situations unrelated to air quality. The TSD and administrative record supporting EPA's action support a finding that Pennsylvania has met its obligations to provide adequate contingency plans to implement authority comparable to that in CAA section 303, as required by CAA section 110(a)(2)(G). The TSD clearly sets forth the relevant statutory and regulatory emergency authority. Furthermore, the TSD sets forth how the Commonwealth followed EPA's September 25, 2009 guidance, entitled "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)" which provides EPA's interpretation of "Prevention of Air Pollution Emergency Episodes" rules at 40 CFR 51.150 and criteria for which states must develop emergency episode contingency plans. The Commenter does not assert that the Commonwealth has not met its statutory and regulatory obligations. Here, the Commenter seeks an expansion of the statutory and regulatory requirements relating specifically to adequate contingency plans for any type of emergency situation. However, the purpose of EPA's action is to determine whether the Commonwealth has met the basic infrastructure requirements of CAA section 110(a)(2) and related regulatory requirements. Therefore, there is no basis for finding that Pennsylvania's SIP fails to meet such requirements. Pennsylvania's SIP contains the requisite general emergency authority to address urgent air quality situations but is not required to have specific contingency plans for

all situations and specifically does not require a plan for PM<sub>2.5</sub> as per EPA guidance.

*Comment:* The Commenter provides a summary of the requirements of CAA section 110(a)(2)(D)(i)(I) and (II). The remaining portion of the comment focuses upon concerns that emissions from "Marcellus Shale operations" may impact Pennsylvania and states adjacent to or downwind of Pennsylvania due to concerns relating to source determinations and ambient air quality monitoring. The Commenter claims "[t]he proposed SIP fails to take into account the impact that Marcellus Shale operations are having on areas downwind from shale activity."

*Response:* This comment appears to address requirements of CAA section 110(a)(2)(D)(i)(I) and (II). As explained in the NPR (76 FR 54410) and the TSD, EPA's action is limited to a determination of whether the Commonwealth has met its obligations pursuant to the portion of 110(a)(2)(D)(i)(II) relating to the part C permit program (or the PSD permit requirements). Therefore, any comment relating to additional requirements of CAA section 110(a)(2)(D)(i)(I) is not relevant to this action. With respect to the PSD requirements of CAA section 110(a)(2)(D)(i)(II), it is EPA's position that this sub-element may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to PSD requirements consistent with the CAA. Pennsylvania has made this confirmation. Pennsylvania's SIP incorporates by reference all Federally enforceable PSD regulations for the NAAQS at issue.<sup>1</sup> For Allegheny County, the PSD requirements have been addressed by an existing Federal Implementation Plan (FIP). The TSD and the administrative record clearly support a finding that Pennsylvania has met its statutory obligations to include adequate provisions prohibiting any source within Pennsylvania from emitting any air pollutant in amounts which will interfere with PSD measures required by any other state. The Commenter does not explain how any emissions from any source in Pennsylvania may interfere with another state's PSD SIP requirements. As explained above, Pennsylvania has met its statutory obligations relating to

<sup>1</sup> EPA notes that Pennsylvania's incorporation by reference of 40 CFR 52.21 includes 40 CFR 51.21(k)(1) which provides that the "owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification \* \* \* would not cause or contribute to air pollution in violation of" any NAAQS.

its PSD Program as required by CAA section 110(a)(2)(D)(i)(II). Many of the CAA 110(a)(2) SIP elements, including section 110(a)(2)(D)(i), relate to the general information and authorities that constitute the "infrastructure" of a state's air quality management program. The CAA 110(a)(2) SIP submissions that EPA is acting upon are not required to address specific industry sources. Rather, these submissions are required to demonstrate the general statutory and regulatory infrastructure a state has to implement to meet the requirements of Subchapter I (Programs and Activities) of the CAA.

*Comment:* The Commenter generally asserts that EPA cannot fully approve Pennsylvania's infrastructure SIPs for several reasons. First, the Commenter generally asserts that the process was not sufficiently transparent because the NPR did not include all of the relevant information, including references to all relevant rules, EPA's analysis of such rules, and links to all relevant data that may be available on the Internet.

*Response:* EPA disagrees with the Commenter. The Commenter is interested in transparency and interested in the Agency providing substantially more information in the **Federal Register**. The Commenter does not assert that the NPR in conjunction with the TSD and other materials in the docket for the proposals were inadequate to promote an appropriate public process on the Commonwealth's infrastructure SIP submittals. EPA believes that the NPR in conjunction with the information provided in the supporting administrative docket were adequate to allow the public an opportunity to review and comment on EPA's proposed action.

The Commenter raises a procedural issue that is separate and distinct from the substantive issue addressed by EPA's proposed rulemaking which is whether the SIP submissions at issue meet the criteria of the portions of CAA section 110(a)(2) addressed in the NPR. The Commenter has not provided EPA with sufficient information supporting a finding that Pennsylvania has failed to meet any of its obligations pursuant to the portions of CAA section 110(a)(2) addressed in EPA's proposed action.

As a general matter, the Commenter seems to interpret the EPA Administrator's goal of transparency as a mandate that all information for any EPA proposed administrative rulemaking must be set forth in the NPR itself, with no reliance on an administrative record. EPA appreciates the Commenter's interest in a "one-stop-shop" for all information (even tangential information) related to its

proposed action. However, the proposed interpretation of “transparent” would be unduly burdensome and contrary to the requirements of the Administrative Procedures Act (APA), 5 U.S.C. 533(b). EPA followed the APA and provided sufficient information to support its proposed administrative action and a public comment period on its proposed action. The documents contained in the docket provided numerous references to specific regulations and the Code of Federal Regulations. The docket also includes EPA’s analysis of such rules relevant to this action along with relevant guidance and data. With respect to “links to all relevant data that may be available on the Internet,” EPA does not typically include detailed information when it’s otherwise publicly available. With respect to analysis of data, there is no requirement that detailed technical information must be included in the NPR. EPA often includes a TSD as part of its administrative rulemaking actions. By including a TSD, in addition to the NPR, the public may more easily understand the basic action EPA is proposing to take and access more detailed information if desired. By making a TSD available on-line, by request, and as a hardcopy in the paper docket, EPA has made this important underlying technical information available to the public and has eliminated unnecessary costs associated with the overall rulemaking action. EPA’s NPR and additional information contained in the docket for public review are in accordance with the APA and fulfill the Administrator’s interest in transparency as well as Federal law requirements.

*Comment:* The Commenter states that the CAA requires that the infrastructure SIPs include an adequate PSD permitting program needed to address CAA section 110(a)(2)(C), (D)(i)(II) and (J) and expresses concern that Pennsylvania’s PSD program may not be “approved” if it lacks significant emission rates found in 40 CFR 52.21(b)(23)(i) [2011] and PM<sub>2.5</sub> increments found in 40 CFR 52.21(c) [2011]. The Commenter states it is not clear whether the Pennsylvania PSD program incorporates by reference the version of the Code of Federal Regulations that existed at the time EPA approved Pennsylvania’s PSD program into the SIP or automatically incorporates the current version of the Code of Federal Regulations. The Commenter requests that EPA either clarify that 25 Pa. Code Section 127.83 incorporates the most recent version of 40 CFR 52.21 automatically or, alternatively, the Commenter indicates

that EPA cannot approve the Pennsylvania SIP for the 2006 PM<sub>2.5</sub> NAAQS until the SIP is updated to incorporate the PM<sub>2.5</sub> increments which were effective December 20, 2010.

*Response:* EPA believes Pennsylvania has a PSD permitting program sufficient to meet the requirements in CAA section 110(a)(2)(C), (D)(i)(II) and (J). Pennsylvania has met the requirements for the PM<sub>2.5</sub> NAAQS embodied in the PM<sub>2.5</sub> NSR Implementation Rule (see 73 FR 28321 (May 16, 2008)), as well as the increment requirements of EPA’s October 20, 2010 rulemaking (75 FR 64864) by virtue of its incorporation by reference of 40 CFR 52.21 in its entirety. EPA’s approval of 25 Pa. Code Section 127.83 on August 21, 1984 (49 FR 33127) explains that Pennsylvania’s incorporation by reference of 40 CFR 52.21 does not identify a specific edition of 40 CFR 52.21 and that all future changes thereto would automatically be incorporated by reference. Therefore, Pennsylvania’s SIP approved PSD program clearly includes the Federal regulations identified by the Commenter.

*Comment:* The Commenter states that EPA cannot approve Pennsylvania’s SIP with regard to CAA section 110(a)(2)(G). The Commenter states that the NPR and TSD give no indication that Pennsylvania has adopted emergency episode plans. The Commenter references the portion of EPA’s September 25, 2009 guidance entitled “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 Standard (NAAQS)” which states that states have to establish their own priority action levels and emergency action levels for PM<sub>2.5</sub> “through their public processes.”

*Response:* EPA disagrees with the Commenter’s view that Pennsylvania’s infrastructure SIP submission is not consistent with CAA section 110(a)(2)(G) with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS. As the Commenter noted, EPA has not amended the regulations of 40 CFR 51.151 to include a significant harm level or priority cut point for PM<sub>2.5</sub>. In the absence of such regulations, EPA issued guidance to states to recommend how they could comply with CAA section 110(a)(2)(G). Also, although the regulations have not changed, a state still needs to meet the statutory requirement, and EPA provided an approach states could use to meet the requirements. The Commenter refers to the September 25, 2009 “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 Standard (NAAQS).” This document is part of the docket supporting the proposed action and is the document that indicates the approach a state could take to meet the requirement. This document may be found in hard copy in the paper docket file and in the electronic docket at Document ID Number EPA–RO3–0AR–2010–0159–0008. The Commenter refers to a portion of this guidance, but fails to include other relevant portions of this guidance. The relevant portion of this guidance recommends:

To address the section 110(a)(2)(G) element, states with air quality control regions identified as either Priority I, Priority IA, or Priority II by the “Prevention of Air Pollution Emergency Episodes” rules at 40 CFR 51.150, must develop emergency episode contingency plans. Currently, those regulations do not specifically address PM<sub>2.5</sub> \* \* \* [F]or the purposes of satisfying the requirements of section 110(a)(2)(G), states would develop emergency episode plans for any area that has monitored and recorded 24-hour PM<sub>2.5</sub> levels greater than 140.4 ug/m<sup>3</sup> since 2006V If this level was never exceeded in any area of the state, the state can certify that it has appropriate general emergency powers to address PM<sub>2.5</sub> related episodes, and that no specific emergency episode plans are necessary at this time, given the existing monitored levels. States should develop submissions to meet this requirement through appropriate public processes.

In accordance with this guidance, Pennsylvania submitted a SIP revision addressing the contingency plan portion of CAA section 110(a)(2)(G) for both the 1997 and 2006 PM<sub>2.5</sub> NAAQS on April 26, 2010. This submittal states in relevant part, “For both the 2006 and 1997 PM<sub>2.5</sub> NAAQS, no specific emergency episode plans are necessary given that existing monitored levels have not exceeded the level of 140.4 micrograms per cubic meter (ug/m<sup>3</sup>) identified by EPA in its September 25, 2009 “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), pp. 6–7.” This submittal was subject to the appropriate public processes. The transmittal letter states that the “public participation process for this SIP revision included a 30 day written comment period and an opportunity for public hearing \* \* \* The DEP did not receive any comments during the public comment period.” This letter from Pennsylvania is contained in the docket with Document ID Number EPA–RO3–0AR–2010–0159–0003. A copy of the April 26, 2010 SIP submittal and the notices of opportunity for public comments are included as attachments to the electronic copy of the document identified above (EPA–RO3–

OAR–2010–0159–0003). Pennsylvania's submittals identified in the electronic docket with Docket ID Number EPA–R03–OAR–2010–0159 meet the requirements in the EPA's guidance document that the Commenter references. Based upon such submittals, Pennsylvania has submitted sufficient information to support a finding that the monitored data throughout the Commonwealth of Pennsylvania from 2006 through April 2010 have not exceeded 140.4  $\mu\text{g}/\text{m}^3$ . Accordingly, EPA has concluded that Pennsylvania's infrastructure SIPs are consistent with the requirements of CAA section 110(a)(2)(G).

*Comment:* The Commenter seeks EPA's review of Pennsylvania's ambient air quality monitoring data for the limited purpose of determining whether Pennsylvania is accurately asserting that it has not monitored any  $\text{PM}_{2.5}$  readings above 140.4  $\mu\text{g}/\text{m}^3$ .

*Response:* EPA agrees that the Agency as a matter of general practice should review state monitoring data in conjunction with its review of a state's assertions relating to such data. A state is required to certify all air monitoring data on a yearly basis (*see* 40 CFR 58.15) and EPA reviews this data each year. EPA has reviewed Pennsylvania's certified ambient air quality monitoring data and as part of that independent review has determined that Pennsylvania's assertion is correct. Pennsylvania's highest  $\text{PM}_{2.5}$  reading since 2006 was at Liberty, PA. The sampled value occurred in 2006 and was 100.7  $\mu\text{g}/\text{m}^3$ . The relevant monitoring data is also accessible to the public at various web sites including <http://www.epa.gov/airdata>. Based upon its review of Pennsylvania's ambient air quality monitoring data since 2006, EPA has determined that Pennsylvania has correctly indicated that it has not monitored any 24 hour  $\text{PM}_{2.5}$  readings above 140.4  $\mu\text{g}/\text{m}^3$ .

*Comment:* The Commenter raises two issues related to the definitions provided in 25 Pa. Code Section 121.1. The Commenter states that with regard to ozone, the definitions of marginal, serious, and severe ozone nonattainment areas in the SIP approved version of 25 Pa. Code Section 121.1 are based on 1-hour ozone NAAQS rather than the 1997 8-hour ozone NAAQS and that these definitions need to be updated. Also, the Commenter states that there is no definition of  $\text{PM}_{2.5}$  in 25 Pa. Code Section 121.1 and that Pennsylvania needs one.

*Response:* EPA agrees that as a general matter the absence or inadequacy of definitions could be relevant to review

of a SIP submittal pursuant to CAA section 110(a)(2), however, EPA disagrees that the specific issues raised by the Commenter support a finding that the SIPs at issue fail to meet the applicable 110(a)(2) requirements. EPA has considered the concerns raised by the Commenter and finds that the Commenter has not identified a defect in the SIP approved version of 25 Pa. Code Section 121.1 that, in and of itself, is sufficient to support a finding that Pennsylvania has not met its obligations pursuant to the portions of section 110(a)(2) addressed herein. The SIP submittals at issue which EPA is approving do not directly address and do not modify the definitions set forth in 25 Pa. Code Section 121.1. Therefore, these specific definitions are not directly a part of this rulemaking. Furthermore, the statutory provisions at issue do not expressly set criteria for the state regulatory definition provisions. The Commenter has not explained how the issues raised relating to specific definitions relate to Pennsylvania's compliance with its obligations pursuant to the portions of CAA section 110(a)(2) at issue in this rulemaking. EPA disagrees with the Commenter concerning the ozone classification definitions because these terms are not directly relevant to the issues germane to the infrastructure SIP action. The definitions relating to ozone nonattainment areas may be relevant to Pennsylvania's compliance with CAA section 110(a)(2)(I). However, as indicated in EPA's NPR, the SIP submittals at issue do not pertain to CAA section 110(a)(2)(I) and EPA's action does not pertain to the applicable requirements of CAA Chapter I, part D (relating to nonattainment areas). These requirements, and issues pertaining only to nonattainment areas for a specific NAAQS, are not required to be addressed on the same schedule as issues pertaining to other general requirements of CAA section 110(a)(1) and 110(a)(2). Therefore, this comment is not relevant to EPA's action and EPA does not have any obligation to respond to such comments. EPA disagrees with the Commenter concerning the  $\text{PM}_{2.5}$  definition issue because the Pennsylvania SIP currently includes a definition of the  $\text{PM}_{2.5}$  NAAQS. Section 121.1 defines the term NAAQS as National Ambient Air Quality Standards. In accordance with 25 Pa. Code section 131.2, as EPA promulgates new or revised NAAQS, Pennsylvania incorporates the NAAQS by reference. Therefore, the Pennsylvania SIP provides a definition of the  $\text{PM}_{2.5}$  NAAQS that is consistent with the CAA.

As a related matter, Pennsylvania recently revised its nonattainment NSR rules. Section 121.1 contains a specific entry for  $\text{PM}_{2.5}$  which states “ $\text{PM}_{2.5}$ —Particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometer body as measured by the applicable reference method or an equivalent method.” These revised rules were subject to public comment and became effective on September 3, 2011. Pennsylvania submitted these NSR revisions including, but not limited to, 25 Pa. Code Section 121.1 to EPA for inclusion into the SIP on September 23, 2011, and EPA approved this revision on July 13, 2012. (*See* 77 FR 41276).

#### IV. Final Action

EPA is approving the Commonwealth of Pennsylvania's submittals that provide the infrastructure elements specified in CAA section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 1997 8-hour ozone and  $\text{PM}_{2.5}$  NAAQS and the 2006  $\text{PM}_{2.5}$  NAAQS. EPA made completeness findings for the 1997 8-hour ozone NAAQS on March 27, 2008 (73 FR 16205) and on October 22, 2008 (73 FR 62902) for the 1997  $\text{PM}_{2.5}$  NAAQS. These findings pertained only to whether the submittals were complete, pursuant to CAA section 110(k)(1)(A), and did not constitute EPA approval or disapproval of such submittals. For the geographic area of Allegheny County, the completeness finding of March 27, 2008 (73 FR 16205) noted Pennsylvania's failure to submit a SIP revision addressing the portion of 110(a)(2)(C) relating to the Part C permit programs for the 1997 ozone NAAQS. EPA recognized that such requirement has already been addressed by a FIP that remains in place, and concluded that the finding of incompleteness would not trigger any additional FIP obligation for Pennsylvania. For all other areas of Pennsylvania, except for Allegheny County, EPA found that the Commonwealth had a SIP approved PSD program in place and found that the CAA section 110(a)(2) submittals at issue were complete.

Two elements identified in CAA section 110(a)(2) are not governed by the three year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to CAA section 172. These elements are: (i) Submissions required by section

110(a)(2)(C) to the extent that the subsection pertains to a permit program in Part D Title I of the CAA; and (ii) any submissions required by section 110(a)(2)(I) which pertains to the nonattainment planning requirements of Part D Title I of the CAA. This action does not cover these specific elements. This action also does not address the requirements of 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS, and the 2006 PM<sub>2.5</sub> NAAQS.

**V. Statutory and Executive Order Reviews**

**A. General Requirements**

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by November 26, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to Pennsylvania's section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS and the 2006 PM<sub>2.5</sub> NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: September 7, 2012.

**W.C. Early,**  
Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart NN—Pennsylvania**

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding entries at the end of the table for Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS, Section 110(a)(2) Infrastructure Requirements for the 1997 PM<sub>2.5</sub> NAAQS, and Section 110(a)(2) Infrastructure Requirements for the 2006 PM<sub>2.5</sub> NAAQS. The amendments read as follows:

**§ 52.2020 Identification of plan.**

*	*	*	*	*
(e)	*	*	*	
(1)	*	*	*	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
* Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	* Statewide .....	* 12/7/07, 6/6/08 .....	* 9-25-12 [Insert page number where the document begins].	* This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
Section 110(a)(2) Infrastructure Requirements for the 1997 PM <sub>2.5</sub> NAAQS.	Statewide .....	12/7/07, 6/6/08, 4/26/10 .....	9–25–12 [Insert page number where the document begins].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2006 PM <sub>2.5</sub> NAAQS.	Statewide .....	4/26/10, 5/24/11 .....	9–25–12 [Insert page number where the document begins].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

\* \* \* \* \*  
 [FR Doc. 2012–23497 Filed 9–24–12; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R09–OAR–2012–0458; FRL–9730–8]

**Approval and Promulgation of Implementation Plans; Arizona; Nogales PM<sub>10</sub> Nonattainment Area Plan**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a state implementation plan revision submitted by the Arizona Department of Environmental Quality to address the moderate area PM<sub>10</sub> (particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers) planning requirements for the Nogales nonattainment area. Consistent with this final action, EPA is approving the following plan elements as meeting the requirements of the Clean Air Act: The Nogales nonattainment area 2008 and 2011 emission inventories; the demonstration that the Nogales nonattainment area is attaining the National Ambient Air Quality Standard for PM<sub>10</sub>, but for international emissions sources in Nogales, Mexico; the demonstration that reasonably available control measures sufficient to meet the standard have been implemented in the nonattainment area; the reasonable further progress demonstration; the demonstration that implementation of measures beyond those needed for attainment meet the contingency measure requirement; and, the motor vehicle emissions budget for the purposes of determining the conformity of transportation plans, programs, and projects with this PM<sub>10</sub> plan.

**DATES: Effective Date:** This rule is effective on October 25, 2012.

**Docket:** EPA has established docket number EPA–R09–OAR–2012–0458 for this action. The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., confidential business information or CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Jerry Wamsley, Air Planning Office, AIR–2, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, telephone number: (415) 947–4111, or email address, [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we”, “us” or “our” are used, we mean EPA. We are providing the following table of contents for ease of locating information in this proposal.

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- I. EPA’s Proposed Action
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**I. EPA’s Proposed Action**

On June 27, 2012, EPA proposed to approve the proposed state implementation plan (SIP) revision submitted by the Arizona Department of Environmental Quality (ADEQ) on May

29, 2012 to address the Clean Air Act (CAA or “Act”) requirements for areas classified as “moderate” nonattainment for the PM<sub>10</sub> national ambient air quality standard (NAAQS), in this case, Nogales, Arizona. ADEQ submitted a plan for the Nogales nonattainment area (NA) entitled *Proposed State Implementation Plan Nogales PM<sub>10</sub> Nonattainment Area*, referred to as the “Nogales 2012 Plan” here and in our proposal. See 77 FR 38400; (June 27, 2012). Specifically, under CAA section 110(k)(3), EPA proposed to approve the following elements of the Nogales 2012 Plan:

- (1) The 2008 base year and 2011 emissions inventories as meeting the requirements of CAA section 172(c)(3);
- (2) The demonstration of attainment but for international emissions as meeting the requirements of CAA section 179B(a)(1);
- (3) The implementation of paving projects and capital improvement projects at the Ports of Entry within the Nogales NA prior to the CAA’s 1994 attainment deadline as meeting the reasonably available control measure/ reasonably available control technology (RACM/RACT) requirements of CAA sections 172(c)(1), 179B(a)(2), and 189(c)(1)(C);
- (4) The implementation of paving projects and capital improvement projects at the Ports of Entry to meet the reasonable further progress (RFP) demonstration requirement of CAA sections 172(c)(2) and 179B(a)(2);
- (5) The implementation of post-1994 paving projects as meeting the contingency measure requirements of CAA sections 172(c)(9) and 179B(a)(2); and,
- (6) The 2011 attainment year motor vehicle emissions budget if revised to include road construction PM<sub>10</sub>, because, as revised, it is derived from the section 179B demonstration and meets the requirements of CAA section 176(c) and 40 CFR 93, subpart A.

To summarize our proposal, first, we described the 24-hour PM<sub>10</sub> NAAQS and its application to the Nogales NA and