qualified operator may use the tax credit to offset payment of or liability for the special reclamation tax for the tax year or carry it forward for use in future tax years until no credit is remaining.

CSR 110–29–6 contains general procedures to claim and administer the tax credit. The qualified operator must provide complete and accurate forms and other information to claim the tax credit. In addition, the qualified operator must maintain records to verify the validity of the tax credit and the amount of tax credit claimed. Finally, the Tax Commissioner has the authority to audit the qualified operator.

All of the proposed State tax credit requirements identified above are intended to conform to the Federal requirements of 30 CFR 800.50 and sections 509 and 519 of SMCRA.

IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the West Virginia program.

Written Comments

Send your written comments to OSMRE at one of the addresses given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**).

Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

V. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 2014.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2014–26659 Filed 11–12–14; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0610; FRL–9919–08–Region 4]

Approval and Promulgation of Implementation Plans; Region 4 States; 2008 Lead, 2008 Ozone and 2010 Nitrogen Dioxide Prevention of Significant Deterioration Infrastructure Plans

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of submissions from Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina and Tennessee for inclusion into each State's implementation plan. This proposal pertains to the Clean Air Act (CAA or Act) infrastructure requirements for the 2008 Lead, 2008 Ozone and 2010 Nitrogen Dioxide (NO_2) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a state implementation plan (SIP) for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. These plans are commonly referred to as ''infrastructure'' SIPs (hereafter referred to as ''infrastructure SIP submissions''). Specifically, EPA is proposing to approve the portions of the submissions from Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina and Tennessee that relate to the infrastructure SIP prevention of significant deterioration (PSD) requirements. All other applicable infrastructure requirements for the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS associated with these States are being addressed in separate rulemakings.

DATES: Written comments must be received on or before December 15, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0610, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. Email: *R4-RDS@epa.gov.*
3. Fax: (404) 562–9019.
4. Mail: ''EPA–R04–OAR–2014–0610,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2014–0610. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity

or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

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

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for the ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Through this action, EPA is proposing approval of the PSD requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) (hereafter ''PSD Elements'') for various infrastructure SIP submissions from the states of Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina and Tennessee. As described further below, for some of these states, EPA is proposing approval of the PSD Elements in the infrastructure SIP submissions for the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS; whereas for other states, EPA is only proposing approval of the PSD Elements of the infrastructure SIP submissions for a subset of these NAAQS. All other applicable infrastructure requirements for the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS associated with these States are being addressed in separate rulemakings.

A brief background regarding the NAAQS relevant to today's proposal is provided below. For comprehensive information on these NAAQS, please refer to the **Federal Register** rulemakings cited below.

a. 2008 Lead NAAQS

On October 5, 1978, EPA promulgated a revised NAAQS for Lead under section 109 of the Act. *See* 43 FR 46246. The Lead standard was set at a level of 1.5 micrograms per cubic meter ($\mu g/m^3$), measured as Lead in total suspended particulate matter (Pb-TSP), not to be exceeded by the maximum arithmetic mean concentration averaged over a calendar quarter. This standard was based on the 1977 Air Quality Criteria for Lead. On November 12, 2008 (75 FR 81126), EPA issued a final rule to revise the Lead NAAQS. The Lead NAAQS was revised to 0.15 $\mu g/m^3$. States were required to submit infrastructure SIP submissions to EPA no later than October 15, 2011, for the 2008 Lead NAAQS.

For the 2008 Lead NAAQS, EPA is only addressing the PSD Elements of the infrastructure SIP submissions from Alabama (received November 4, 2011), Florida (received October 14, 2011), Georgia (received May 14, 2012), Kentucky (received July 17, 2012), Mississippi (received November 17, 2011), and South Carolina's (received September 20, 2011). EPA notes that the Agency approved the PSD Elements of Tennessee's 2008 Lead infrastructure SIP submission on August 12, 2013 (78 FR 48806).

b. 2008 Ozone NAAQS

On March 27, 2008, EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour Ozone NAAQS to 0.075 parts per million. *See* 77 FR 16436. States were required to submit infrastructure SIP submissions for the 2008 8-hour Ozone NAAQS to EPA no later than March 2011.

For the 2008 Ozone NAAQS, EPA is only addressing the PSD Elements of the infrastructure SIP submissions from Alabama (received August 20, 2012), Georgia (received March 6, 2012), Mississippi (received May 29, 2012; and resubmitted July 26, 2012), and South Carolina (received on July 17, 2012). EPA notes that the Agency approved the PSD Elements of the Florida, Kentucky and Tennessee infrastructure SIP submissions for the 2008 Ozone NAAQS on May 19, 2014 (79 FR 28607),[1] March 7, 2013 (78 FR 14691), and March 6, 2013 (78 FR 14450), respectively.

c. 2010 NO_2 NAAQS

On February 9, 2010 (75 FR 6474), EPA established a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. States were required to submit infrastructure SIP

[1] On May 19, 2014, EPA took final action to approve Florida's December 19, 2013, SIP revision to adopt the Greenhouse Gas (GHG) Tailoring Rule into the Florida SIP. *See* 79 FR 28607. See Section V below for more detailed information.

submissions for the 2010 NO_2 NAAQS to EPA no later than January 2013.

For the 2010 NO_2 NAAQS, EPA is addressing the PSD Elements of the infrastructure SIP submissions from Alabama (received April 23, 2013), Florida (received January 22, 2013), Georgia (received March 25, 2013), Kentucky (received April 26, 2013), Mississippi (received February 28, 2013), South Carolina (received April 30, 2014), and Tennessee (received March 13, 2014).

II. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the PSD Elements portions of SIP submissions that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS for various states in Region 4. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D. Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[2] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[3] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[4] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory

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

[3] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013. EPA notes that this 2013 Infrastructure SIP Guidance document was not intended to apply to infrastructure SIP submissions for the 2008 Lead NAAQS.

[4] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[5] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[6] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[7]

III. What are states required to address under Sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3) and 110(a)(2)(J) related to PSD?

Section 110(a)(2)(C) has three components that must be addressed in infrastructure SIP submissions: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and PSD permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program).

Section 110(a)(2)(D)(i) has two components; 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1''), and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4'').

Section 110(a)(2)(J) has four components that must be addressed in infrastructure SIP submissions: (1) consultation with government officials, (2) public notification, (3) prevention of significant deterioration, and (4) visibility protection.

With respect to the PSD Elements of these sections, EPA interprets the CAA to require each state to make, for each new or revised NAAQS, an infrastructure SIP submission that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of the PSD Elements may also be satisfied by demonstrating that the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants.

IV. What are the PSD program requirements?

In addition to analyzing whether a state has adequate authority to regulate new and modified sources to assist in the protection of air quality, there are also four structural PSD program requirements that are relevant to EPA's review of the PSD Elements of the infrastructure SIP submissions for the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS. The EPA regulations that require these SIP revisions are: (1) The Phase II Rule[8]; (2) the Greenhouse Gas (GHG) Tailoring Rule[9] as consistent with the holding in *Utility Air Regulatory Group* v. *Environmental Protection Agency;*[10] (3) the NSR Fine Particulate Matter ($PM_{2.5}$) Rule[11]; and, (4) the $PM_{2.5}$ PSD Increment-Significant Impact Levels (SILs)-Significant Monitoring Concentrations (SMC) Rule (only as it relates to $PM_{2.5}$ Increments).[12] Specific details on these PSD requirements can be found in the respective final rules cited above, however, a brief summary of each rule is provided below.

The Phase II rule established federal NSR permitting requirements for the implementation of the ozone NAAQS including recognizing nitrogen oxide as an ozone precursor. *See* 70 FR 71612.

The GHG Tailoring Rule established emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions. *See* 75 FR 31514. EPA notes, that on June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *See Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S. Ct. 2427. In that decision, the Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also determined that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply EPA regulations that would require that SIPs include

[5] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

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

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

[8] ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule'' (November 29, 2005, 70 FR 71612) (hereafter referred to as the ''Phase II Rule'').

[9] Prevention of Significant Deterioration and Title V Greenhouse Gas (GHG) Tailoring Rule; Final Rule'' (June 3, 2010, 75 FR 31514) (hereafter referred to as the ''GHG Tailoring Rule'').

[10] *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S. Ct. 2427 (2014).

[11] Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers; Final Rule'' (May 16, 2008, 73 FR 28321) (hereafter referred to as the ''NSR $PM_{2.5}$ Rule'').

[12] ''Final Rule on the Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC); Final Rule'' (October 20, 2010, 75 FR 64864) (hereafter referred to as the ''$PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments)'').

permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to the EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States District Court for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

The 2008 NSR $PM_{2.5}$ Rule [13] and 2010 $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments) established NSR permitting requirements for the implementation of the $PM_{2.5}$ NAAQS including increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS. *See* 73 FR 28321 and 75 FR 64864. On January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club* v. *EPA,* 703 F.3d 458 (D.C. Cir. 2013), issued a judgment that, among other things, vacated the provisions adding the $PM_{2.5}$ SMC to the Federal regulations, at 40 CFR 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*), that were promulgated as part of the 2010 $PM_{2.5}$ PSD Increment-SILs-SMC Rule.[14] *See* 75 FR 64864; *see also, Sierra Club* v. *EPA,* 703 F.3d 458 (D.C. Cir. 2013). In its decision, the court held that EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for $PM_{2.5}$ be included in all PSD permit applications. Thus, although the $PM_{2.5}$ SMC was not a required element of a State's PSD program and thus not a structural requirement for purposes of infrastructure SIPs, were a SIP-approved PSD program that contains such a provision to use that provision to issue new permits without requiring ambient $PM_{2.5}$ monitoring data, such application of the SIP would be inconsistent with the court's opinion and the requirements of section 165(e)(2) of the CAA. Of the States that are the subject of today's proposed rulemaking, EPA approved the SMC's into the Alabama, Florida and Mississippi SIP on September 26, 2012 (77 FR 59100), September 19, 2012 (77 FR 58027), and September 26, 2012 (77 FR 59095), respectively. However, given the clarity of the court's decision, it would now be inappropriate for these states to continue to allow applicants for any pending or future PSD permits to rely on the $PM_{2.5}$ SMC in order to avoid compiling ambient monitoring data for $PM_{2.5}$. Because of the vacatur of the EPA regulations, the SMC provisions, included in these States' SIP-approved PSD programs on the basis of EPA's regulations are unlawful and no longer enforceable by law. Permits issued on the basis of these provisions as they appear in approved SIPs would be inconsistent with the CAA and difficult to defend in administrative and judicial challenges. Thus, the SIP provisions may not be applied even prior to their removal from the SIPs. Alabama, Florida and Mississippi should instead require applicants requesting a PSD permit, including those having already been applied for but for which the permit has not yet been received, to submit ambient $PM_{2.5}$ monitoring data in accordance with the CAA requirements whenever either direct $PM_{2.5}$ or any $PM_{2.5}$ precursor is emitted in a significant amount.[15]

On December 9, 2013, EPA issued a final rulemaking to remove the vacated and remanded $PM_{2.5}$ SILs [16] and the vacated $PM_{2.5}$ SMC provisions from 40 CFR 51.166 and 52.21.[17] *See* 79 FR 73698. Because the Court vacated the $PM_{2.5}$ SMC provisions in 40 CFR 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*), EPA revised the existing concentration for the $PM_{2.5}$ SMC listed in sections 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*) to zero micrograms per cubic meter (0 mg/m^3). Were EPA to completely remove $PM_{2.5}$ from the list of pollutants in sections 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*) of the PSD regulations, $PM_{2.5}$ would no longer be a listed pollutant.

EPA did not entirely remove $PM_{2.5}$ as a listed pollutant in the SMC provisions so as to avoid any potential that sections 51.166(i)(5)(iii) and 52.21(i)(5)(iii) could be interpreted as giving reviewing authorities the discretion to exempt permit applicants from the requirement to conduct monitoring for $PM_{2.5}$. Such a

[13] On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA,* No. 08–1250, 2013 WL 45653 (D.C. Cir., filed July 15, 2008) (consolidated with 09–1102, 11–1430), issued a judgment that remanded EPA's 2007 and 2008 rules implementing the $PM_{2.5}$ NAAQS. The court concluded that since subpart 4 of the CAA generally applies to PM_{10}, EPA should have also followed the more prescriptive subpart 4 structure for the $PM_{2.5}$ implementation rules. The court ordered EPA to repromulgate the implementation rules pursuant to subpart 4. Subpart 4 of Part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 implementation rule addressed by the court decision, ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' 73 FR 28321 (May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 rule in order to comply with the court's decision. Accordingly, EPA's approval of state's infrastructure SIP related to elements (C), (D)(i)(prong 3), or (J) with respect to the PSD requirements promulgated in the 2008 NSR $PM_{2.5}$ Rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure actions. EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due 3 years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

[14] ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC); Final Rule, 75 FR 64864 (October 20, 2010).''

[15] In lieu of the applicants' need to set out $PM_{2.5}$ monitors to collect ambient data, applicants may submit $PM_{2.5}$ ambient data collected from existing monitoring networks when the permitting authority deems such data to be representative of the air quality in the area of concern for the year preceding receipt of the application. EPA believes that applicants will generally be able to rely on existing representative monitoring data to satisfy the monitoring data requirement.

[16] The court's January 22, 2013, decision also vacated and remanded back to EPA the $PM_{2.5}$ SILs. EPA's December 9, 2013 final rule also removed the $PM_{2.5}$ SILs from the CFR. The $PM_{2.5}$, SILs are not a required element of a State's PSD program and thus not a structural requirement for purposes of infrastructure SIPs. The $PM_{2.5}$ SILs are not approved into the SIPs that are the subject of this proposed rulemaking.

[17] Final Rule entitled ''Prevention of Significant Deterioration for Particulate Matter Less Than 2.5 Micrometers—Significant Impact Levels and Significant Monitoring Concentration: Removal of Vacated Elements;'' 79 FR 73698 (December 9, 2013).

conclusion would contravene the Court's decision and the CAA.

By continuing to include $PM_{2.5}$ as a pollutant in the list contained in sections 51.166(i)(5)(i) and 52.21(i)(5)(i), with the numerical value replaced with 0 mg/m^3, we avoid any concern that paragraph (iii) of the two affected sections could be applied to excuse permit applicants from adequately addressing the monitoring requirement for $PM_{2.5}$.

EPA also advises states to begin preparations to remove the $PM_{2.5}$ provisions from their state PSD regulations and SIPs. As the previously-approved $PM_{2.5}$ SMC provisions in the Alabama, Florida and Mississippi SIP are no longer enforceable, EPA does not believe the existence of these provisions in the States' implementation plans precludes today's proposed rulemaking to approve the infrastructure SIP submissions for Alabama, Florida and Mississippi as the submissions relate to the PSD elements of the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS.

V. What is EPA's analysis of how Region 4 states addressed sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) related to PSD?

Described below is EPA's analysis of how the Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina and Tennessee infrastructure SIP submissions meet the requirements of the PSD Elements for the NAAQS for which they were submitted. This analysis includes review of the EPA's previous approval of the four structural PSD program requirements with respect to each of the states addressed in this action. Table 1 below summarizes EPA approvals of these structural PSD program requirements into the Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina and Tennessee SIPs. EPA's rationale for today's proposal with respect to each State is provided below. All other applicable infrastructure requirements for the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS associated with these States are being addressed in separate rulemakings.

TABLE 1—EPA APPROVED STRUCTURAL PSD PROGRAM REQUIREMENTS

State	Phase II rule	Greenhouse gas (GHG) tailoring rule	NSR $PM_{2.5}$ rule	$PM_{2.5}$ PSD increment-SILs-SMC rule
Alabama	May 1, 2008 (73 FR 23957)	December 29, 2010 (75 FR 81863).	September 26, 2012 (77 FR 59100).	September 26, 2012 (77 FR 59100).
Florida	June 15, 2012 (77 FR 35862)	May 19, 2014 (79 FR 28607)	September 19, 2012 (77 FR 58027).	September 19, 2012 (77 FR 58027).
Georgia	November 22, 2010 (75 FR 71018).	September 8, 2011 (76 FR 55572).	September 8, 2011 (76 FR 55572).	April 9, 2013 (78 FR 21065).
Kentucky	September 15, 2010 (75 FR 55988).	December 29, 2010 (75 FR 81868).	Refer to Footnote [18]	Refer to Footnote.[18]
Mississippi	December 20, 2010 (75 FR 79300).	December 29, 2010 (75 FR 81858).	September 26, 2012 (77 FR 59095).	September 26, 2012 (77 FR 59095).
South Carolina	June 23, 2011 (77 FR 36875)	Refer to Footnote [19]	June 23, 2011 (77 FR 36875)	April 3, 2013 (78 FR 19994).
Tennessee	February 7, 2012 (77 FR 6016).	February 28, 2012 (77 FR 11744).	July 30, 2012 (77 FR 44481)	January 9, 2014 (79 FR 1593).

a. Alabama

For the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS, Alabama's authority to regulate new and modified sources to assist in the protection of air quality in Alabama is established in the Alabama Administrative Code Chapters 335–3–14–.01 ''General Provisions,'' 335–3–14–.02 ''Permit Procedure,'' 334–3–14–.03 ''Standards for Granting Permits,'' 335–3–14–.04 ''Prevention of Significant Deterioration in Permitting,'' and 335–3–14–.05 ''Air Permits Authorizing Construction in or Near Nonattainment Areas.'' Alabama's infrastructure SIP submissions demonstrate that new major sources and major modifications in areas of the state designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD Elements, including the authority to regulate GHG emitting sources consistent with the holding in *Utility Air Regulatory Group* v. *Environmental Protection Agency,* for purposes of the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS (See Table 1).

As such, EPA has made the preliminary determination that Alabama's SIP and practices are adequate and comply with PSD Elements of the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS. Accordingly, in this action EPA is proposing to approve Alabama's infrastructure SIP submissions as satisfying the infrastructure SIP PSD Elements for the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS.

b. Florida

For the 2008 Lead and 2010 NO_2 NAAQS, Florida's authority to regulate new and modified sources to assist in the protection of air quality in nonattainment, attainment or unclassifiable areas is established in Florida Administrative Code Chapters 62–210, *Stationary Sources—General Requirements, Section 200—Definitions;* and 62–212, and *Stationary Sources—*

[18] Through a final rule signed by the EPA Region 4 Administrator, on October 22, 2014, EPA is took final action in a separate rulemaking to approve Kentucky's January 13, 2013, SIP revision which addresses the NSR $PM_{2.5}$ Rule and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule requirements. EPA proposed approval of Kentucky's January 13, 2013, SIP revision on July 23, 2014 (79 FR 42745).

[19] On June 11, 2010, the South Carolina Governor signed an Executive Order to confirm that the State had authority to implement appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions at the state level. On December 30, 2010, EPA published a final rulemaking, ''Action To Ensure Authority To Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule'' (75 FR 82254) to narrow EPA's previous approval of State title V operating permit programs that apply (or may apply) to GHG-emitting sources; this rule hereafter is referred to as the ''Narrowing Rule.'' EPA narrowed its previous approval of certain State permitting thresholds, for GHG emissions so that only sources that equal or exceed the GHG thresholds, as established in the final Tailoring Rule, would be covered as major sources by the Federally-approved programs in the affected States. South Carolina was included in this rulemaking. On March 4, 2011, South Carolina submitted a letter withdrawing from EPA's consideration the portion of South Carolina's SIP for which EPA withdrew its previous approval in the Narrowing Rule. These provisions are no longer intended for inclusion in the SIP, and are no longer before EPA for its approval or disapproval. A copy of South Carolina's letter can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0610.

Preconstruction Review, Section 400—Prevention of Significant Deterioration, of the Florida SIP. Florida's infrastructure SIP submissions demonstrate that new major sources and major modifications in areas of the state designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD Elements, including the authority to regulate GHG emitting sources consistent with the holding in *Utility Air Regulatory Group* v. *Environmental Protection Agency,* for purposes of the 2008 Lead and 2010 NO_2 NAAQS (See Table 1).

As such, EPA has made the preliminary determination that Florida's SIP and practices are adequate and comply with PSD Elements of the 2008 Lead and 2010 NO_2 NAAQS. Accordingly, in this action EPA is proposing to approve, Florida's infrastructure SIP submissions as satisfying the infrastructure SIP PSD Elements for the 2008 Lead and the 2010 NO_2 NAAQS.

c. Georgia

For the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS, Georgia's authority to regulate new and modified sources to assist in the protection of air quality in Georgia is established in Georgia Regulation 391–3–1–.02(7), *Prevention of Significant Deterioration of Air Quality,* which pertains to the construction or modification of any major stationary source in areas designated as attainment or unclassifiable.

Georgia's infrastructure SIP submissions demonstrate that new major sources and major modifications in areas of the state designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD Elements, including the authority to regulate GHG emitting sources consistent with the holding in *Utility Air Regulatory Group* v. *Environmental Protection Agency,* for purposes of the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS (See Table 1).

As such, EPA has made the preliminary determination that Georgia's SIP and practices are adequate and comply with the PSD Elements of the 2008 Lead, 2008 Ozone, and 2010 NO_2 NAAQS. Accordingly, in this action EPA is proposing to approve, Georgia's infrastructure SIP submissions as satisfying the infrastructure SIP PSD Elements for the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS.

d. Kentucky

For the 2008 Lead and 2010 NO_2 NAAQS, Kentucky's authority to regulate new and modified sources to assist in the protection of air quality in nonattainment, attainment or unclassifiable areas is established in Kentucky Administrative Regulation Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards,* which describes the permit requirements for new major sources or major modifications of existing sources in areas classified as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the CAA. These requirements are designed to ensure that sources in areas attaining the NAAQS at the time of designations prevent any significant deterioration in air quality. Chapter 51 also establishes the permitting requirements for areas in or around nonattainment areas and provides the Commonwealth's statutory authority to enforce regulations relating to attainment and maintenance of the NAAQS.

Kentucky's infrastructure SIP submissions demonstrate that new major sources and major modifications in areas of the state designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD Elements, including the authority to regulate GHG emitting sources consistent with the holding in *Utility Air Regulatory Group* v. *Environmental Protection Agency,* for purposes of the 2008 Lead and 2010 NO_2 NAAQS (See Table 1).

As such, EPA has made the preliminary determination that Kentucky's SIP and practices are adequate and comply with the PSD Elements of the 2008 Lead and 2010 NO_2 NAAQS. Accordingly, in this action EPA is proposing to approve Kentucky's infrastructure SIP submissions as satisfying the infrastructure SIP PSD Elements for the 2008 Lead and 2010 NO_2 NAAQS.

e. Mississippi

For the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS, Mississippi's authority to regulate new and modified sources to assist in the protection of air quality in Mississippi is established in Regulations APC–S–5—*Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality* and APC–S–2—*Permit Regulation for the Construction and/or Operation of Air Emissions Equipment.* These SIP-approved regulations pertain to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable. Mississippi's infrastructure SIP submissions demonstrate that new major sources and major modifications in areas of the state designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD Elements, including the authority to regulate GHG emitting sources consistent with the holding in *Utility Air Regulatory Group* v. *Environmental Protection Agency,* for purposes of the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS (See Table 1). As such, EPA has made the preliminary determination that Mississippi's SIP and practices are adequate and comply with the PSD Elements requirements of the 2008 Lead, 2008 Ozone, and 2010 NO_2 NAAQS. Accordingly, in this action, EPA is proposing to approve Mississippi's infrastructure SIP submissions as satisfying the infrastructure SIP PSD Elements requirements for the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS.

f. South Carolina

For the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS, South Carolina's authority to regulate new and modified sources to assist in the protection of air quality in South Carolina is established in Regulations 61–62.1, Section II, *Permit Requirements;* 61–62.5, Standard No. 7, *Prevention of Significant Deterioration;* and 61–62.5, Standard No. 7.1, *Nonattainment New Source Review* of South Carolina's SIP. These regulations pertain to the construction of any new major stationary source or any modification at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable. South Carolina's infrastructure SIP submissions demonstrate that new major sources and major modifications in areas of the state designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD Elements, including the authority to regulate GHG emitting sources consistent with the holding in

Utility Air Regulatory Group v. *Environmental Protection Agency,* for purposes of the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS (See Table 1).

As such, EPA has made the preliminary determination that South Carolina's SIP and practices are adequate and comply with the PSD Elements requirements of the 2008 Lead, 2008 Ozone, and 2010 NO_2 NAAQS. Accordingly, in this action EPA is proposing to approve South Carolina's infrastructure SIP submission as satisfying the infrastructure SIP PSD Elements for the 2008 Lead, 2008 Ozone and 2010 NO_2 NAAQS.

g. Tennessee

For the 2010 NO_2 NAAQS, Tennessee's authority to regulate new and modified sources to assist in the protection of air quality in Tennessee is established in Chapter 1200–3–9, *Construction and Operating Permits,* of the Tennessee SIP. This Chapter pertains to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable. Tennessee's infrastructure SIP submission demonstrates that new major sources and major modifications in areas of the state designated attainment or unclassifiable for the NO_2 NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD Elements, including the authority to regulate GHG emitting sources consistent with the holding in *Utility Air Regulatory Group* v. *Environmental Protection Agency,* for purposes of the 2010 NO_2 NAAQS (See Table 1).

As such, EPA has made the preliminary determination that Tennessee's SIP and practices are adequate and comply with the PSD Elements requirements of the 2010 NO_2 NAAQS. Accordingly, in this action EPA is proposing to approve Tennessee's infrastructure SIP submission as satisfying the infrastructure SIP PSD Elements requirements for the 2010 NO_2 NAAQS.

VI. Proposed Action

As described above, EPA is proposing to approve the portions of the above-described infrastructure SIP submissions from Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina and Tennessee to address the PSD permitting requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) of the CAA. As described above, for some of these states, EPA is proposing approval of the PSD Elements of the infrastructure SIP submissions for the 2008 Lead, 2008 Ozone and 2010 Nitrogen NO_2 NAAQS; whereas for other states, EPA is only proposing approval of the PSD Elements of the infrastructure SIP submissions for a subset of these NAAQS. EPA is proposing approval of these portions of these submissions because they are consistent with section 110 of the CAA.

EPA also notes that, at present, the Agency has preliminarily determined that the Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina and Tennessee SIPs are sufficient to satisfy the PSD permitting requirements portion of section 110(a)(2)(C), 110(a)(2)(D)(i)(II), prong 3 and 110(a)(2)(J) with respect to GHGs because the PSD permitting program previously-approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina and Tennessee PSD permitting programs may currently contain provisions that are no longer necessary in light of the Supreme Court's *Utility Air Regulatory Group* v. *Environmental Protection Agency* decision, these previous approvals do not render the infrastructure SIP submission inadequate to satisfy sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J). The SIPs contain the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect EPA's proposed approval of Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina and Tennessee's infrastructure SIPs as to the PSD permitting requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J).

VII. Statutory and Executive Order Reviews

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

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

With the exception of South Carolina, the SIPs involved in this proposal are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.'' With respect to today's proposed action as it relates to South Carolina, EPA notes that the Catawba Indian Nation Reservation is located within South Carolina and pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation

and are fully enforceable by all relevant state and local agencies and authorities.'' Thus, the South Carolina SIP applies to the Catawba Reservation, however, because today's proposed action is not approving any specific rule into the South Carolina SIP, but rather proposing that the State's already approved SIP meets certain CAA requirements, EPA has preliminarily determined that there are no substantial direct effects on the Catawba Indian Nation. EPA has also preliminarily determined that these revisions will not impose any substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: October 30, 2014.

Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2014–26737 Filed 11–12–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2013–0602; FRL–9919–07–OAR]

RIN 2060–AR33

Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units

AGENCY: Environmental Protection Agency.

ACTION: Notice; additional information regarding the translation of emission rate-based CO_2 goals to mass-based equivalents.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this notice in support of the proposed rule, ''Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units,'' published on June 18, 2014 and the supplemental proposal, ''Carbon Pollution Emission Guidelines: Existing Stationary Sources in Indian Country and U.S. Territories; Multi-jurisdictional Partnerships,'' issued on October 28, 2014, to provide further discussion of potential approaches for translating the emission rate-based carbon dioxide (CO_2) goals that the EPA has proposed for each affected jurisdiction to an equivalent mass-based metric.

DATES: Comments on the proposed rule published on June 18, 2014, along with the additional information presented in this notice, must be received on or before December 1, 2014.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0602, by one of the following methods:

Federal eRulemaking portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

Email: A-and-R-Docket@epa.gov. Include Docket ID No. EPA–HQ–OAR–2013–0602 in the subject line of the message.

Facsimile: (202) 566–9744. Include Docket ID No. EPA–HQ–OAR–2013–0602 on the cover page.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail code 28221T, Attn: Docket ID No. EPA–HQ–OAR–2013–0602, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

Hand/Courier Delivery: EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Ave. NW., Washington, DC 20004, Attn: Docket ID No. EPA–HQ–OAR–2013–0602. Such deliveries are accepted only during the Docket Center's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: All submissions must include the agency name and Docket ID No. (EPA–HQ–OAR–2013–0602). The EPA's policy is to include all comments received without change, including any personal information provided, in the public docket, available online at *http://www.regulations.gov,* 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 *http://www.regulations.gov* or email. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2013–0602. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information you claim as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

The EPA requests that you also submit a separate copy of your comments to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**). If the comment includes information you consider to be CBI or otherwise protected, you should send a copy of the comment that does not contain the information claimed as CBI or otherwise protected.

The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *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, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *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 *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Public