8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a permanent safety zone on the navigable waters of Port Valdez, in the vicinity of the Valdez Spit. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T17–0668 to read as follows:

§ 165.T17–0668 Safety Zone; City of Valdez July 4th Fireworks, Port Valdez; Valdez, AK.

(a) *Regulated area.* The following area is a permanent safety zone: All navigable waters of Port Valdez within a 200-yard radius from a position of 61°07′22″ N and 146°21′10″ W. This includes the entrance to the Valdez small boat harbor.

(b) *Effective date.* This rule will be effective from 9:30 p.m. until 11:30 p.m. on July 4th of each year, or during the same timeframe on specified rain dates of July 5th through July 8th of each year.

(c) *Definitions.* The following definitions apply to this section:

(1) The term ''designated representative'' means any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Prince William Sound, to act on his or her behalf.

(2) The term ''official patrol vessel'' may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP, Prince William Sound.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the designated representative during periods of enforcement.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel or other official patrol vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area may request permission from the COTP via VHF Channel 16 or (907) 835–7205 (Prince William Sound Vessel Traffic Center) to request permission to do so.

(5) The Coast Guard will issue a broadcast notice to mariners to advise mariners of the safety zone before and during the event.

(6) The COTP may be aided by other Federal, state, borough and local law enforcement officials in the enforcement of this section.

Dated: December 9, 2014.

M.R. Franklin,

Lieutenant Commander, U.S. Coast Guard, Acting, Captain of the Port Prince William Sound, Alaska.

[FR Doc. 2014–29229 Filed 12–12–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2014–0683, FRL–9920–40–Region 2]

Approval and Promulgation of Implementation Plans; New York; Infrastructure SIP for the 2008 Lead NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve certain elements of New York's State Implementation Plan (SIP) revision submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 National Ambient Air Quality Standard (NAAQS) for lead (Pb). Section 110(a) of the CAA requires

that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an infrastructure SIP.

DATES: Comments must be received on or before January 14, 2015.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2014–0683, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Ruvo.Richard@epa.gov.*
- *Fax:* 212–637–3901.
- *Mail:* Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:00 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2014–0683. 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. 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 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 Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kirk Wieber at telephone number: (212) 637–3381, email address: *Wieber.Kirk@epa.gov,* fax number: (212) 637–3901, or the above EPA, Region 2 address.

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing?
II. What is the background information?
III. What elements are required under section 110(a)(1) and (2)?
IV. What is EPA's approach to the review of infrastructure SIP submissions?
V. What did New York submit?
VI. How has the State addressed the elements of the section 110(a)(1) and (2) ''infrastructure'' provisions?
VII. What is the impact of the June 2014 Supreme Court Green House Gas decision on New York's infrastructure SIP for the 2008 Pb NAAQS?
VIII. What action is EPA taking?
IX. Statutory and Executive Order Reviews

I. What action is EPA proposing?

EPA is proposing to approve certain elements of the State of New York Infrastructure SIP as meeting the section 110(a) infrastructure requirements of the Clean Air Act (CAA) for the 2008 lead (Pb) National Ambient Air Quality Standard (NAAQS or standard). As explained below, the State has the necessary infrastructure, resources, and general authority to implement the 2008 Pb standard.

II. What is the background information?

On November 12, 2008, EPA promulgated a new, rolling 3 month average NAAQS for Pb (2008 Pb NAAQS). See 73 FR 66964.[1] The 2008 Pb NAAQS is 0.15 micrograms per cubic meter of air (μg/m^3) maximum (not-to-be-exceeded). In the same action EPA revised the secondary Pb NAAQS to be identical in all respects to the revised primary standard, *i.e.,* 0.15 μg/m^3.

Section 110(a)(1) provides the procedural and timing requirements for State Implementation Plans (SIPs). Section 110(a)(2) lists specific elements that states must meet for SIP requirements related to a newly established or revised NAAQS. Sections 110(a)(1) and (2) of the CAA require, in part, that states submit to EPA plans to implement, maintain and enforce each of the NAAQS promulgated by EPA. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. These SIPs are commonly called infrastructure SIPs. Based on the October 15, 2008 date of signature, infrastructure SIPs for the 2008 Pb NAAQS were due on October 15, 2011.

III. What elements are required under section 110(a)(1) and (2)?

The infrastructure requirements are listed in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' and September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards.'' In addition, there were two memorandums referenced: One dated October 14, 2011, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' and the other dated September 13, 2013, in which EPA released new guidance entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1)

[1] Final rule signed October 15, 2008. The 1978 lead standard (1.5 μg/m3 as a quarterly average) remains in effect until one year after an area is designated for the 2008 standard, except that in areas designated nonattainment for the 1978 lead standard, the 1978 standard remains in effect until implementation plans to attain or maintain the 2008 standard are approved.

and 110(a)(2).'' [2] This new guidance (2013 Guidance) addresses the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS, as well as infrastructure SIPs for new or revised NAAQS promulgated in the future. The 14 elements required to be addressed are as follows: (1) Emission limits and other control measures; (2) ambient air quality monitoring/data system; (3) program for enforcement of control measures; (4) interstate transport; (5) adequate resources; (6) stationary source monitoring system; (7) emergency power; (8) future SIP revisions; (9) consultation with government officials; (10) public notification; (11) prevention of significant deterioration (PSD) and visibility protection; (12) air quality modeling/data; (13) permitting fees; and (14) consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time that the nonattainment area plan requirements are due pursuant to section 172. See 77 FR 46354 (August 3, 2012); 77 FR 60308 (October 3, 2012, footnote 1). These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address the nonattainment planning requirements related to section 110(a)(2)(C) or 110(a)(2)(I).

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

EPA is acting upon the SIP submission from New York State that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than 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. The list of required elements provided in section 110(a)(2) contains a wide variety of provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[3] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the CAA, which specifically address nonattainment SIP requirements.[4] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[5] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions

[2] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' can be found at: *http://www.epa.gov/airquality/lead/pdfs/20111014infrastructure.pdf.* ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' can be found at: *http://www.epa.gov/airquality/urbanair/sipstatus/infrastructure.html.*

[3] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[4] See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[5] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[6] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[7]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. The monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example, because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[8]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[9] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[10] 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.[11] 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.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are

[6] See, *e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[7] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

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

[9] 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.

[10] ''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.

[11] 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.

approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and New Source Review (NSR) pollutants. 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 2008 Pb NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[12] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

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

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II). Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[13] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[14] 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

[12] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[13] 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).

[14] 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).

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.[15]

V. What did New York submit?

New York's section 110 infrastructure submittal which addressed the 2008 Pb NAAQS was submitted by the New York State Department of Environmental Conservation (NYSDEC) on October 13, 2011. New York's October 13, 2011 section 110 submittal demonstrates how the State, where applicable, has a plan in place that meets the requirements of section 110 for the 2008 Pb NAAQS. This plan references the current New York Air Quality SIP, the New York Codes of Rules and Regulations (NYCRR), the New York Environmental Conservation Law (ECL) and the New York Public Officer's Law (POL). The NYCRR, ECL and POL referenced in the submittal are publicly available. New York's SIP and air pollution control regulations that have been previously approved by EPA and incorporated into the New York SIP can be found at 40 CFR 52.1670 and are posted on the Internet at: *http://www.epa.gov/region02/air/sip/ny_reg.htm.*

VI. How has the State addressed the elements of the section 110(a)(1) and (2) ''infrastructure'' provisions?

EPA compared New York's Infrastructure SIP submittal for the 2008 Pb NAAQS to New York's Infrastructure SIP submittals for the 1997 8-hour ozone, the 1997 and 2006 fine particulate matter ($PM_{2.5}$) and 2010 nitrogen dioxide (NO_2) NAAQS. On June 20, 2013, EPA took final action (see 78 FR 37122) approving certain elements and sub-elements of New York's 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ Infrastructure SIPs. EPA also approved certain elements of New York's 2010 NO_2 Infrastructure SIP on September 12, 2014. Based upon EPA's comparison, EPA has determined that the information provided in New York's 2011 Pb Infrastructure SIP is nearly identical to the information provided in New York's Infrastructure SIP submittals for the 1997 8-hour ozone, 1997 and 2006 $PM_{2.5}$ and NO_2 NAAQS. Infrastructure SIPs for different criteria pollutants can have common aspects which are identical for each NAAQS (*e.g.,* authority to promulgate emission limitations, enforcement, air quality modeling capabilities, adequate personnel, resources and legal authority). The rationale for approving certain elements of New York's Infrastructure SIP for Pb is the same as the rationale for approving those elements of New York's 1997 8-hour ozone, 1997 and 2006 $PM_{2.5}$ and NO_2 Infrastructure SIPs. Since the rationale for approving certain elements of New York's Pb Infrastructure SIP is the same as the rationale for approving certain elements of New York's 1997 8-hour ozone, 1997 and 2006 $PM_{2.5}$, and NO_2 Infrastructure SIPs, EPA is not repeating this evaluation in today's proposal. Instead, the reader is referred to EPA's evaluation of the three SIP submittals (the 1997 8-hour ozone, 1997 and 2006 $PM_{2.5}$ and 2010 NO_2 Infrastructure SIPs) detailed in the following four documents: (1) ''Technical Support Document for EPA's Proposed Rulemaking for the New York's State Implementation Plan Revision: State Implementation Plan Revision For Meeting the Infrastructure Requirements In the Clean Air Act Dated December 13, 2007, October 2, 2008 and March 15, 2010'' (TSD); (2) EPA's proposed approval dated April 30, 2013 (78 FR 25236); and, (3) EPA's June 20, 2013 final rule approving certain elements of New York's Infrastructure SIPs for the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS (78 FR 37122) and (4) EPA's proposed rulemaking on the 2010 NO_2 (May 2, 2014, 79 FR 25066). These documents are available in the electronic docket for this proposed action at *www.regulations.gov.* We are, of course, accepting comments on that rationale as it applies to all elements of our proposed approval of New York's Infrastructure SIP for the Pb NAAQS.

EPA is proposing approval of the following elements and sub-elements of New York's Infrastructure SIP for Pb: 110(a)(2)(A) [Emission limits and other control measures]; 110(a)(2)(B) [Ambient air quality monitoring/data system]; 110(a)(2)(C) [Program for enforcement of control measures, prevention of significant deterioration, and new source review]; 110(a)(2)(D) [Interstate/international transport]; 110(a)(2)(E) [Adequate personnel, funding, and authority]; 110(a)(2)(F) [Stationary source monitoring and reporting]; 110(a)(2)(G) [Emergency episodes]; 110(a)(2)(H) [Future SIP revisions]; 110(a)(2)(J) [Consultation with government official, public notification, PSD, and visibility protection]; 110(a)(2)(K) [Air quality modeling and data]; 110(a)(2)(L) [Permitting fees]; and 110(a)(2)(M) [Consultation/participation by affected local entities].

As stated above, there are certain aspects of the elements of New York's Infrastructure SIP for the 2008 Pb NAAQS that are common to New York's 1997 8-hour ozone, 1997 and 2006 $PM_{2.5}$, and 2010 NO_2 Infrastructure SIPs that EPA approved on June 20, 2013 and therefore EPA is not repeating the rationale for approving the following elements of New York's Infrastructure SIP for the 2010 Pb NAAQS in today's proposal: elements A, E, F, H, J, K, L, and M.

As discussed in the following sections, for those elements of New York's Pb Infrastructure SIP that differ from New York's 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ Infrastructure SIPs, and 2010 NO_2 Infrastructure SIP, EPA has reviewed and evaluated the aspects of those elements, namely elements B, C, D and G.

Element B: Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, to monitor, compile and analyze ambient air quality data, and to make these data available to EPA upon request. On December 27, 2010 (75 FR 81126), EPA finalized additional revisions pertaining to where state and local monitoring agencies would be required to conduct Pb monitoring. The new regulations (40 CFR 58.10 and 40 CFR 58.13) replaced the population-oriented monitoring requirement with a requirement to add Pb monitors to urban National Core Monitoring Program (NCore), a multi-pollutant network that integrates several advanced measurement systems for particles, pollutant gases and meteorology. Also, EPA lowered the emission threshold from 1.0 ton(s) per year (tpy) to 0.5 tpy for source-specific monitoring of industrial sources of Pb.

New York addressed EPA's new monitoring requirements when it submitted its Annual Monitoring Network Review Plan (Plan) of 2014 on July 29, 2014. EPA approved this Plan on November 3, 2014. EPA is therefore proposing to determine that New York has met the requirements of section 110(a)(2)(B) of the CAA with respect to the 2008 Pb NAAQS. A copy of New York's 2014 Monitoring Plan and EPA's November 3, 2014 approval letter are in the docket for today's proposal at *www.regulations.gov.*

Element C: Program for enforcement of control measures: Section 110(a)(2)(C) requires states to have a plan that

[15] 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).

includes a program providing for enforcement of all SIP measures and the regulation of the modification and construction of any stationary source, including a program to meet PSD of Air Quality and minor source new source review.

New York's Infrastructure SIP for Pb references the State's PSD and Nonattainment New Source Review (NNSR) permitting requirements contained in 6 NYCRR Part 231, Part 200 and Part 201. EPA approved these rules into the SIP on November 17, 2010 (75 FR 70140). New York's minor source new source review program is regulated under Part 201.

EPA has reviewed and evaluated New York's Infrastructure SIP for the 2008 Pb NAAQS for meeting the requirements of element C. Under Part 231, a major Pb facility is defined as one with annual actual emissions equal to or greater than five tpy. A proposed major Pb facility, or an existing major Pb facility that proposes a modification in excess of the de minimis emission limit (0.6 tpy for Pb), is subject to the relevant program dependent upon its location. A Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) analysis would result.

The Infrastructure SIP ensures that all applicable PSD requirements that are included in PSD permits are incorporated into title V operating permits, and that all federally-enforceable requirements are applied and enforced. Since Pb is a NAAQS, the PSD provisions of Part 231 are applicable to Pb. For these reasons, EPA concludes that by referencing Part 231, which is part of New York's approved SIP, New York's Infrastructure SIP addresses the PSD requirements of section 110(a)(2)(C) for Pb.

Therefore, EPA proposes to find that the State has adequate authority and regulations to ensure that SIP-approved control measures are enforced. EPA also finds that based on the approval of New York's PSD program, New York has the authority to regulate the construction of new or modified stationary sources to meet the PSD program requirements. EPA is proposing to determine that New York has met the requirements of section 110(a)(2)(C) and (J) of the CAA with respect to the 2008 Pb NAAQS. It should be noted that the PSD provisions of Part 231 address the requirements of section 110(a)(2)(J) as well as section 110(a)(2)(C) and Part 231's applicability on Pb are consistent.

Element D: Interstate transport: Section 110(a)(2)(D) of the Clean Air Act is divided into two subsections, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). The first of these, 110(a)(2)(D)(i), in turn, contains four ''prongs'' the first two of which appear in 110(a)(2)(D)(i)(I) and the second two of which appear in 110(a)(2)(D)(i)(II). The two prongs in 110(a)(2)(D)(i)(I) prohibit any source or other type of emissions activity within the state from emitting any air pollutants in amounts which will contribute significantly to nonattainment in any other state with respect to any primary or secondary NAAQS (prong 1), or interfere with maintenance by any other state with respect to any primary or secondary NAAQS (prong 2). The two prongs in 110(a)(2)(D)(i)(II) prohibit any source or other type of emissions activity within the state from emitting any air pollutants in amounts which will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). Subsection 110(a)(2)(D)(ii) addresses interstate and international pollution abatement, and requires SIPs to include provisions insuring compliance with sections 115 and 126 of the CAA, relating to interstate and international pollution abatement.

In this action, EPA is proposing to approve the 110(a)(2)(D) portion of the New York SIP submission and determine that the existing New York SIP contains provisions sufficient to satisfy all of the requirements of 110(a)(2)(D) for the 2008 Pb NAAQS.

The New York SIP contains provisions to address the requirements of 110(a)(2)(D)(i)(I), *i.e.,* prongs 1 and 2 of 110(a)(2)(D)(i), with respect to the Pb NAAQS. In addition, the physical properties of Pb prevent Pb emissions from being transported long distances or from participating in complex atmospheric reactions such as $PM_{2.5}$ or ozone. More specifically, there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases. New York conducted a review of their emissions inventory when they made their designation recommendations for the revised Pb NAAQS and a survey of facility data showed no facilities with emissions of 0.5 tons per year (tpy) or greater existed in close proximity to state borders or anywhere within the State of New York. New York State is designated either unclassifiable/attainment or unclassifiable and current air quality data continues to show attainment. Based on New York not having any facilities with emissions of 0.5 tpy or greater existing in close proximity to a state border or anywhere in the State which might impact a neighboring state, transport is not a concern with respect to Pb. EPA is proposing to determine that New York's SIP includes adequate provisions to prohibit sources or other emission activities within the State from emitting Pb in amounts that will contribute significantly to nonattainment or interfere with maintenance by any other state with respect specifically to the Pb NAAQS.

To satisfy section 110(a)(2)(D)(i)(II), New York confirms that new major sources of Pb and major modifications are subject to the State's PSD program (under prong 3). With regard to the requirement of prong 4 (the visibility protection requirement), New York states that sources of Pb are distanced far enough from any federal Class 1 area as to not impact visibility in any significant way. Also, New York states that Pb-related visibility impacts in general are considered to be insignificant. With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II)—prong 4, significant impacts from stationary source Pb emissions are expected to be limited to short distances from the source and most, if not all, Pb stationary sources are located at distances from Class I areas such that visibility impacts would be negligible. Although Pb can be a component of coarse and fine particles, Pb generally comprises a small fraction of coarse and fine particles. Furthermore, when evaluating the extent that Pb could impact visibility, Pb-related visibility impacts were found to be insignificant (*e.g.,* less than 0.10%).[16]

With respect to 110(a)(2(D)(ii), New York is not subject to any determinations under sections 126 and 115 of the CAA and there are no violations related to transport of emissions from sources in the State. Based upon EPA's review of the air quality data and the State's submittal, EPA is proposing to determine that the State has met its obligations pursuant to 110(a)(2)(D) with respect to the 2008 Pb NAAQS.

Element G: Emergency episodes: Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. Based on EPA's experience to date with the Pb NAAQS and designating Pb nonattainment areas, EPA expects that such an event would

[16] Analysis by Mark Schmidt, OAQPS, ''Ambient Pb's Contribution to Class I Area Visibility Impairment,'' June 17, 2011.

be unlikely, and if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of lead.

New York's plan to address air pollution emergencies is stated in articles 3 and 19 of the ECL. To prevent and control these emergency episodes, the State adopted 6 NYCRR Part 207, ''Control Measures for Air Pollution Episode,'' which implements ECL-section 3–0301. Part 207 requires the owner of a ''significant air contamination source'' to submit a proposed episode action plan to the Department of Environmental Conservation's Commissioner, containing detailed steps to be taken by the source owner to reduce air contaminant emissions at each stage of an air pollution episode. The regulation also enables the Commissioner to designate air pollution episodes which trigger the action plan. In October 2009, New York completed a comprehensive revision of its Air Pollution Episode Procedures that involved updating the contact information for the Bureaus of Air Quality Assurance, Stationary Sources, and Air Quality Surveillance, and the Impact Assessment and Meteorology Section, along with local-level emergency contacts. EPA proposes that New York has met the requirements of section 110(a)(2)(G) for Pb.

VII. What is the impact of the June 2014 Supreme Court Green House Gas decision on New York's infrastructure SIP for the 2008 Pb NAAQS?

With respect to Elements C and J, EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. New York has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said 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 said 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 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 an 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.

At present, EPA has determined the New York SIP is sufficient to satisfy Elements C, D(i)(II), and 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 New York PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy Elements C, D(i)(II), and J. The SIP contains 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 New York's infrastructure SIP as to the requirements of Elements C, D(i)(II), and J.

VIII. What action is EPA taking?

EPA is proposing to approve New York's submittal as fully meeting the infrastructure requirements for the 2008 primary Pb NAAQS for all section 110(a)(2) elements and sub-elements, as follows: (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

EPA is not acting on New York's submittal as it relates to nonattainment provisions, the NSR program required by part D in section 110(a)(2)(C) and the measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs because the State's infrastructure SIP submittal does not include nonattainment requirements and EPA will act on them when, if necessary, they are submitted.

EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery or courier following the directions in the **ADDRESSES** section of this **Federal Register**.

IX. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. 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 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 2, 2014.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2014–29332 Filed 12–12–14; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1609, 1615, 1632, and 1652

RIN 3206–AN13

Federal Employees Health Benefits Program: FEHB Plan Performance Assessment System

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a proposed rule to amend the system for assessing the annual performance of health plans contracted under the Federal Employees Health Benefits (FEHB) Program. The purpose of this rule is to measure and assess all FEHB plan performance (experience-rated and community-rated) through the use of a common, objective, and quantifiable performance assessment for the 2016 plan year.

DATES: OPM must receive comments on or before January 14, 2015.

ADDRESSES: Send written comments to Wenqiong Fu, Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4312, 1900 E Street NW., Washington, DC; or FAX to (202) 606–6010 Attn: Wenqiong Fu. You may also submit comments using the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Wenqiong Fu, Policy Analyst at (202) 606–0004.

SUPPLEMENTARY INFORMATION:

FEHB Background

The Federal Employees Health Benefits (FEHB) Program was established in 1960 and provides health insurance to over eight million Federal employees, annuitants, and their family members. Chapter 89 of Title 5 United States Code, which authorizes the FEHB Program, allows OPM to contract with health insurance carriers to provide coverage under certain types of plans.

FEHB contracts are either community-rated or experience-rated. In community-rated contracts, the overall premium is based on the carrier's standard rating methodology, taking into account factors in the larger geographic area or ''community.'' In experience-rated contracts, the FEHB carrier considers actual ''experience'' or medical costs of the group of covered lives. The two types of contracts are regulated under different sections of the FEHB Acquisition Regulation (FEHBAR). Premiums are determined according to distinct processes and plan performance is rewarded differently.

Current Performance Assessment System

Under current regulations, performance is assessed for experience-rated plans based on profit analysis factors that are weighted to create a service charge that OPM pays to carriers. For community-rated plans, performance is assessed according to specific elements that can result in a percentage of premium withheld from payment to the carrier. Both of these performance frameworks are under the umbrella of the Federal Acquisition Regulation, which governs contracting government-wide.

In determining the level of the service charge (profit/risk margin) for experience-rated plans, Contracting Officers consider six categories of factors: Contractor performance, contract cost, federal socioeconomic programs, cost control, independent development, and capital investments. OPM Contracting Officers conduct the service charge analysis and rely heavily on the contractor performance factor. Contractor performance is weighted the highest, comprises a significant portion of the total service charge, and involves the largest amount of data.

Community-rated plans have two performance elements that may lead to a percentage of premium being withheld: Customer service and critical contract compliance requirements.

Proposed FEHB Plan Assessment System

To establish a consistent assessment system, create a more objective performance standard, and provide more transparency for enrollees, OPM is developing a framework that will utilize a discrete set of quantifiable measures examining key aspects of contract performance and specific criteria for performance factors which will then be linked to health plan premium disbursements.

This regulation proposes to replace the current methods of plan assessment with a new framework, in which both experience-rated and community-rated plans utilize the same measurement criteria. For experience-rated plans, the performance-based service charge will be administered similarly to the current service charge process. For community-rated plans, the performance adjustment will be administered similarly to the current process using an adjustment to net-to-carrier premium payments made during the first quarter of the following