submissions as supplemented by the State for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

13. *Consultation/participation by affected local entities:* Section 110(a)(2)(M) requires states to ''provide for consultation and participation [in SIP development] by local political subdivisions affected by [the SIP].''

The statutory provisions cited in Colorado's SIP submittals (contained within this docket) meet the requirements of CAA section 110(a)(2)(M), so we propose to approve Colorado's SIP as meeting these requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

VII. What action is the EPA taking?

In this action, the EPA is proposing to approve infrastructure elements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS from the State's certifications as shown in Table 1. Elements we propose no action on are reflected in Table 2. A comprehensive summary of infrastructure elements organized by the EPA's proposed rule action are provided in Table 1 and Table 2.

TABLE 1—LIST OF COLORADO INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO APPROVE

Proposed for approval
July 10, 2013 submittal—2010 SO_2 NAAQS:
(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
December 1, 2015 submittal—2012 $PM_{2.5}$ NAAQS:
(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).

TABLE 2—LIST OF COLORADO INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO TAKE NO ACTION ON

Proposed for no action (Revision to be made in separate rulemaking action)
July 13, 2013 submittal—2010 SO_2 NAAQS:
(D)(i)(I) prongs 1 and 2.
December 1, 2015 submittal—2012 $PM_{2.5}$ NAAQS:
(D)(i)(I) prongs 1 and 2.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action 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, Oct. 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, Aug. 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 the 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, Feb. 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 16, 2017.

Suzanne J. Bohan,

Acting Regional Administrator, Region 8.

[FR Doc. 2017–11574 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2016–0709; FRL–9963–27–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ National Ambient Air Quality Standards; South Dakota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of South Dakota to demonstrate the State meets infrastructure requirements of the Clean Air Act (Act, CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for sulfur dioxide (SO_2) on June 2, 2010, and fine particulate matter ($PM_{2.5}$) on December 14, 2012. Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA.

DATES: Written comments must be received on or before July 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2016–0709 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, 303–312–6563, *fulton.abby@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for the EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to the EPA through *http://www.regulations.gov* or email. 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 that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted 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.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On June 2, 2010, the EPA promulgated a revised primary SO_2 standard of 75 ppb, based on a three-year average of the annual 99th percentile of one-hour daily maximum concentrations (75 FR 35520, June 22, 2010). On December 14, 2012, the EPA promulgated a revised annual $PM_{2.5}$ standard by lowering the level to 12.0 $\mu g/m^3$ and retaining the 24-hour $PM_{2.5}$ standard at a level of 35 $\mu g/m^3$ (78 FR 3086, Jan. 15, 2013).

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for SO_2 and $PM_{2.5}$ already meet those requirements. The EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo). On September 25, 2009, the EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 Memo), followed by the October 14, 2011, ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (2011 Memo). Most recently, the EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' on September 13, 2013 (2013 Memo).

III. What is the scope of this rulemaking?

The EPA is acting upon the SIP submissions from South Dakota that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 SO_2 and 2012 $PM_{2.5}$ 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 three 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 the EPA 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.

The 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, the 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 the EPA rule to address the visibility protection requirements of CAA section 169A; and nonattainment new source review (NSR) 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 disparate 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.[1] The 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, the 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.

Examples of some of these ambiguities and the context in which the EPA interprets the ambiguous portions of section 110(a)(1) and 110(a)(2) are discussed at length in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under ''III. What is the Scope of this Rulemaking?''

With respect to certain other issues, the 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 (SSM) that may be contrary to the CAA and the EPA's policies addressing such excess emissions; (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 the EPA; and (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of the EPA's ''Final NSR Improvement Rule,'' 67 FR 80186, Dec. 31, 2002, as amended by 72 FR 32526, June 13, 2007 (''NSR Reform'').

[1] 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.

IV. What infrastructure elements are required under sections 110(a)(1) and (2)?

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 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.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (1) Section 110(a)(2)(C) to the extent it refers to permit programs (known as ''nonattainment NSR'') required under part D, and (2) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title 1 of the CAA are not changed by a new NAAQS.

V. How did south dakota address the infrastructure elements of sections 110(a)(1) and (2)?

The South Dakota Department of Environment and Natural Resources (DENR) submitted certifications of South Dakota's infrastructure SIP for the 2010 SO_2 NAAQS on December 20, 2013 and the 2012 $PM_{2.5}$ NAAQS on January 25, 2016. South Dakota's infrastructure certifications demonstrate how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. Infrastructure SIPs were taken out for public notice and South Dakota provided an opportunity for public hearing, as indicated in the cover letter of each certification (available within this docket). These plans reference the current Administrative Rules of South Dakota (ARSD) and South Dakota Codified Laws (SDCL). These submittals are available within the electronic docket for today's proposed action at *www.regulations.gov.* The ARSD and SDCL referenced in the submittals are publicly available at *http://legis.sd.gov/rules/RulesList.aspx* and *http://legis.sd.gov/Statutes/Codified_Laws/default.aspx.* South Dakota's SIP, air pollution control regulations and statutes that have been previously approved by the EPA and incorporated into the South Dakota SIP can be found at 40 CFR 52.2170.

VI. Analysis of the State Submittals

1. *Emission limits and other control measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules

and timetables for compliance, as may be necessary or appropriate, to meet the applicable requirements of this Act.

Multiple SIP-approved state air quality regulations within the ARSD and cited in South Dakota's certifications provide enforceable emission limitations and other control measures, means of techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, subject to the following clarifications.

First, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Furthermore, South Dakota has no areas designated as nonattainment for the 2010 SO_2 or 2012 $PM_{2.5}$ NAAQS. South Dakota's certifications (contained within this docket) generally listed provisions within its SIP which regulate pollutants through various programs, including major and minor source permit programs. This suffices, in the case of South Dakota, to meet the requirements of section 110(a)(2)(A) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

Second, as previously discussed, the EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the agency plans to take action in the future to address such state regulations. In the meantime, the EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Third and finally, in this action, the EPA is also not proposing to approve or disapprove any existing state provision with regard to excess emissions during SSM or operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance[2] and the agency is addressing such state regulations separately (80 FR 33840, June 12, 2015).

Therefore, the EPA is proposing to approve South Dakota's infrastructure SIP for the 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(A) to include enforceable emission limitations and other control measures, means, or techniques to meet the applicable requirements of this element.

2. *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to ''(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.''

Under ARSD 74:36:02, the DENR operates a network of air monitoring sites. The EPA approved South Dakota's 2016 network changes through an Ambient Air Monitoring Plan response letter (contained within the docket) mailed to the DENR on November 1, 2016. The State of South Dakota submits data to the EPA's Air Quality System database in accordance with the deadlines in 40 CFR 58.16. South Dakota's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

We find that South Dakota's SIP and practices are adequate for the ambient air quality monitoring and data system requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS; and therefore, propose to approve the infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS for this element.

3. *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to ''include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure NAAQS are achieved, including a permit program as required in parts C and D.''

To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. As explained elsewhere in this action, the EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. The EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

Enforcement of Control Measures Requirement

The State's submissions cite SIP approved ARSD Chapter 74:36:09 (Prevention of significant deterioration) and ARSD Chapter 74:36:20 (Construction permits for new sources and modifications) which provide for the enforcement of emission limits and control measures. SDCL 34A–1–39 through 34A–1–54 and 34A–1–62 gives the DENR authority to provide enforcement of South Dakota's measure and regulations that require new sources or modifications to existing sources to apply for and obtain an air quality permit before constructing.

PSD Requirements

With respect to elements (C) and (J), the EPA interprets the CAA 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) prong 3 (PSD) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. South Dakota has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

South Dakota implements the PSD program by, for the most part, incorporating by reference the federal PSD program as it existed on a specific date. The State periodically updates the PSD program by revising the date of incorporation by reference and submitting the change as a SIP revision. As a result, the SIP revisions generally reflect changes to PSD requirements that the EPA has promulgated prior to the revised date of incorporation by reference.

On June 30, 2011, we approved a revision to the South Dakota PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated in 2005 (76 FR 43912, July 22, 2011). As a result, the approved South Dakota PSD program meets current requirements for ozone.

With respect to GHGs, on June 23, 2014, the United States Supreme Court addressed the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427 (2014). 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

[2] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to the EPA Air Division Directors, ''State Implementation Plans (SIPs): Policy Regarding Emissions During Malfunctions, Startup, and Shutdown.'' (Sept. 20, 1999).

source required to obtain a PSD permit. The Court also held that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, (anyway sources) contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA,* 606 F. App'x. 6, at *7–8 (D.C. Cir. April 10, 2015), issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or ''anyway sources.'' [3] With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v) ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.''

The EPA is planning to take additional steps to revise the federal PSD rules in light of the Supreme Court and subsequent D.C. Circuit opinion. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to the EPA's PSD regulations. The EPA is not expecting states to have revised their PSD programs in anticipation of the EPA's planned actions to revise its PSD program rules in response to the court decisions.

At present, the EPA has determined that South Dakota's SIP is sufficient to satisfy elements (C), (D)(i)(II) prong 3, and (J) with respect to GHGs. This is because the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits issued to ''anyway sources'' contain limitations on GHG emissions based on the application of BACT. The EPA most recently approved revisions to South Dakota's PSD program on October 13, 2016 (81 FR 70626). The approved South Dakota PSD permitting program does not contain provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit's amended judgment, as these provisions were removed in 81 FR 70626. The SIP contains the PSD requirements for applying the BACT requirement to greenhouse gas emissions from ''anyway sources'' that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent the EPA's approval of South Dakota's infrastructure SIP as to the requirements of Elements (C), (D)(i)(II) prong 3, and (J).

Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, the EPA promulgated the rule, ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321) and on October 20, 2010 the EPA promulgated the rule, ''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)'' (75 FR 64864). The EPA regards adoption of these $PM_{2.5}$ rules as a necessary requirement when assessing a PSD program for the purposes of element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded the EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for PM 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 nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 Implementation rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the court's decision. Accordingly, the EPA's proposed approval of South Dakota's infrastructure SIP as to elements C or J with respect to the PSD requirements promulgated by the 2008 Implementation 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 the EPA's action on the present infrastructure action. The EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three 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.

The second PSD requirement for $PM_{2.5}$ is contained in the EPA's October 20, 2010 rule, ''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)'' (75 FR 64864). The EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of element (C).

On July 22, 2011, we approved revisions to ARSD Chapter 74:36:09 that adopted by reference federal provisions of 40 CFR part 52, section 21, as they existed on July 1, 2009 (76 FR 43912, July 22, 2011). As July 1, 2009 is after the effective date of the 2008 $PM_{2.5}$ Implementation Rule, 76 FR 43912 incorporated the requirements of the 2008 $PM_{2.5}$ Implementation Rule; specifically, 40 CFR 52.21(b)(23)(i) and 52.21(b)(50). On July 29, 2013, the State submitted revisions amending the ARSD pertaining to the issuance of South Dakota air quality permits. On June 27, 2014, we acted on two pieces from the July 29, 2013 submittal (see 79 FR

[3] *See* 77 FR 41066 (July 12, 2012) (rulemaking for definition of ''anyway'' sources).

36419) which included the removal of ARSD Chapter 74:36:04:03:01 (Minor Source Operating Permit Variance) and revisions to ARSD Chapter 74:36:10 (New Source Review). The July 29, 2013, submittal also included revisions to ARSD Chapter 74:36:09 (Prevention of Significant Deterioration) which we acted on in our January 29, 2015 rulemaking (80 FR 4799). The revision adopted by reference federal provisions of 40 CFR part 52, section 21, as they existed on July 1, 2012. As July 1, 2012, is after the effective date of the 2010 $PM_{2.5}$ Increment Rule, the revisions to ARSD 74:36:09 as submitted on July 29, 2013, incorporated the requirements of the 2010 $PM_{2.5}$ Increment Rule; specifically, 40 CFR 52.21(b)(14)(i),(ii),(iii), (b)(15)(i),(ii), and paragraph (c). We approved the necessary portions of the July 29, 2013 submission to reflect the requirements of the 2010 $PM_{2.5}$ Increment Rule. South Dakota's SIP-approved PSD program therefore meets current requirements for $PM_{2.5}$. As a result, the EPA is proposing to approve South Dakota's infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program was originally approved by the EPA on September 6, 1995 (60 FR 46222). Since approval of the minor NSR program, the State and the EPA have relied on the program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. Additionally, the EPA is not proposing to approve or disapprove any state rules with regard to the NSR Reform requirements because they are outside the scope of this action. The EPA's action taken on changes to South Dakota's minor source NSR program (79 FR 36419, June 27, 2014) does not impact the approvability of Section 110(a)(2)(C) in this action.

The EPA is proposing to approve South Dakota's infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

4. *Interstate transport:* The interstate transport provisions in CAA section 110(a)(2)(D)(i) (also called ''good neighbor'' provisions) require each state to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements (or prongs) related to the impacts of air pollutants transported across state lines. The two elements under section 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will (prong 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (prong 2) interfere with maintenance by any other state with respect to the same NAAQS. The two elements under section 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C (prong 3) to prevent significant deterioration of air quality or (prong 4) to protect visibility. In this action, the EPA is only addressing prongs 3 (interference with PSD) and 4 (interference with visibility protection) of 110(a)(2)(D)(i) with regard to the 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. We are not addressing prong 1 or prong 2 for either NAAQS in this action, and will address these prongs in a later rulemaking.

A. Evaluation of Interference With Measures To Prevent Significant Deterioration (PSD)

South Dakota's certifications for both the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS both referenced the State's SIP-approved PSD program to address prong 3 and 4 of 110(a)(2)(D)(i). Both certifications can be found in the docket for this action. With regard to the PSD portion of section 110(a)(2)(D)(i)(II), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).[4] As noted in Section VI.3 of this proposed action, South Dakota has such a program, and the EPA is therefore proposing to approve South Dakota's SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

As stated in the 2013 Memo, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. South Dakota does not contain any nonattainment areas. The consideration of nonattainment NSR for element 3 is therefore not relevant as all major sources locating in the State are subject to PSD. As South Dakota's SIP meets PSD requirements for all regulated NSR pollutants, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

B. Evaluation of Interference With Measures To Protect Visibility

To determine whether the CAA section 110(a)(2)(D)(i)(II) requirement for visibility protection is satisfied, the SIP must address the potential for interference with visibility protection caused by the pollutant (including precursors) to which the new or revised NAAQS applies. An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies the 110(a)(2)(D)(i)(II) requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. In the absence of a fully approved regional haze SIP, a state can still make a demonstration that satisfies the visibility requirement section of 110(a)(2)(D)(i)(II).[5]

South Dakota submitted a regional haze SIP to the EPA on January 21, 2011, and submitted an amendment to the SIP on September 19, 2011. The EPA approved South Dakota's regional haze SIP on April 26, 2012 (77 FR 24845). The EPA is proposing to find that as a result of the prior approval of the South Dakota regional haze SIP, the South Dakota SIP contains adequate provisions to address the 110(a)(2)(D)(i) visibility requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. Therefore, we are proposing to approve the South Dakota SIP as meeting the requirements of prong 4 of CAA section 110(a)(2)(D)(i) for both of these NAAQS.

[4] See 2013 Memo.

[5] See 2013 Memo. In addition, the EPA approved the visibility requirement of 110(a)(2)(D)(i) for the 1997 Ozone and $PM_{2.5}$ NAAQS for Colorado before taking action on the State's regional haze SIP. 76 FR 22036 (April 20, 2011).

5. *Interstate and International transport provisions:* CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

Section 126(a) requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator of the U.S. EPA (Administrator) regarding sources violating the ''interstate transport'' provisions of section 110(a)(2)(D)(i). Section 115 similarly pertains to international transport of air pollution.

As required by 40 CFR 51.166(q)(2)(iv), South Dakota's SIP-approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD.[6] This suffices to meet the notice requirement of section 126(a).

South Dakota has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. In summary, the SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

6. *Adequate resources:* Section 110(a)(2)(E)(i) requires states to provide ''necessary assurances that the state [. . .] will have adequate personnel, funding, and authority under State law to carry out [the SIP] (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof).'' Section 110(a)(2)(E)(ii) also requires each state to ''comply with the requirements respecting state boards'' under CAA section 128. Section 110(a)(2)(E)(iii) requires states to provide ''necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the state has responsibility for ensuring adequate implementation of such [SIP] provision.''

a. Sub-Elements (i) and (iii): Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

SDCL 34A–1–57 through 34A–1–60 provide adequate authority for the State of South Dakota and the DENR to carry out its SIP obligations with respect to the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant from the EPA along with required state matching funds to provide funding necessary to carry out South Dakota's SIP requirements. South Dakota's resources meet the requirements of CAA section 110(a)(2)(E). The regulations cited by South Dakota in their certifications and contained within this docket also provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions by local governments. Therefore, we propose to approve South Dakota's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

b. Sub-Element (ii): State Boards

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.[7]

On January 29, 2015 (80 FR 4799), the EPA approved SDCL 1–40–25.1 and revisions to ARSD 74:09, Procedures Board of Minerals and Environment, into the South Dakota SIP as meeting the requirements of section 128 of the Act. SDCL 1–40–25.1 addresses board composition requirements in section 128(a)(1) and ARSD 74:09 addresses conflict of interest requirements in section 128(a)(2). Details on how these portions of the SDCL and ARSD meet the requirements of section 128 are provided in our December 1, 2014 (79 FR 71040) proposal notice. In our January 29, 2015 action, we correspondingly approved South Dakota's infrastructure SIP for the 1997 and 2006 $PM_{2.5}$, 2008 lead, 2008 ozone and 2010 NO_2 NAAQS for element (E)(ii). South Dakota's SIP continues to meet the requirements of section 110(a)(2)(E)(ii), and we propose to approve the infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS for this element.

7. *Stationary source monitoring system:* Section 110(a)(2)(F) requires: (i) ''The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources; (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources; and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to [the Act], which reports shall be available at reasonable times for public inspection.''

The South Dakota provisions listed in the State's certifications and contained within this docket provide authority to establish a program for measurement and testing of sources, including requirements for sampling and testing. South Dakota's SIP approved continuous emissions monitoring system rules (ARSD 74:36:13 and contained within this docket) require facilities to monitor and report emission data. ARSD 74:36:04:15(10), Contents of operating permit, requires operating permits for minor sources to include monitoring and related record keeping and reporting requirements. Reports contain the quantity of hazardous air pollutants, in tons, emitted for each 12-month period in the reporting period and supporting documentation. Operating permits for minor sources must comply with emission limits and other requirements of the Act (ARSD 74:36:04:04 and ARSD 74:36:04:15).

Additionally, ARSD 74:36:05:16.01(9) is applicable regarding data from sources with title V permits. South Dakota has an approved title V program (61 FR 2720, Jan. 29, 1996) and the definition of applicable requirements for a Part 70 source has been approved into its SIP at ARSD 74:36:01:05. This re-enforces a facility's record keeping and reporting emissions data responsibilities under title V permitting, even though the title V program is not approved into the SIP.

Furthermore, South Dakota is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data.

[6] See ARSD 74:36:09:03.

[7] The EPA's proposed rule notice (79 FR 71040, Dec. 1, 2014) includes a discussion of the legislative history of how states could meet the requirements of CAA section 128.

All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. South Dakota made its latest update to the NEI on January 15, 2016. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.*

Based on the analysis above, we propose to approve the South Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

8. *Emergency powers:* Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to ''provide for authority comparable to that in [CAA section 303 [8]] and adequate contingency plans to implement such authority.''

Under CAA section 303, the Administrator has authority to bring suit to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment. If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if the EPA subsequently files a civil suit. SDCL section 34A–1–45 and ARSD section 74:36:03:01 provide APCD with general emergency authority comparable to that in section 303 of the Act.[9]

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as discussed above). This can be met can by submitting a plan that meets the applicable requirements of 40 CFR part 51, subpart H for the relevant NAAQS if the NAAQS is covered by those regulations.

Rules contained in ARSD and South Dakota's SIP adopt by reference the criteria in 40 CFR 51.151 as the air quality episode plan to address activities causing imminent and substantial endangerment to public health, including a contingency plan to implement the emergency episode provisions of the SIP. As of the date of South Dakota's submittal, the EPA has not established priority classification for a significant harm level for $PM_{2.5}$.

Subpart H of 40 CFR part 51 requires states to classify regions and to develop contingency plans (also known as emergency episode plans) after ambient concentrations of certain criteria pollutants in an area have exceeded specified levels. However, Subpart H does not currently address requirements for the 24-hour $PM_{2.5}$ standard. In 2009, the EPA issued a guidance memorandum that, among other things, recommended an approach for states to address the contingency plan requirements of 110(a)(2)(G) with respect to the 2006 $PM_{2.5}$ NAAQS.[10] The guidance, in Attachment A, suggested that states develop a contingency plan if, based on the most recent three calendar years of data, an area within the state had monitored and recorded a 24-hour $PM_{2.5}$ level greater than 140.4 mg/m3. For states that were to develop a contingency plan, the guidance recommended states set priority and emergency levels consistent with requirements of 40 CFR 51.150 through 51.153. The EPA notes that section 51.153 requires periodic reevaluation of priority classifications based on the three most recent years of air quality data.

South Dakota has recorded no levels of ambient air concentrations in the three most recent complete calendar years—2013, 2014, and 2015—that exceed the 2009 guidance memorandum.[11] Furthermore, South Dakota's is classified as Priority III for SO_2 and is therefore not required to submit emergency episode contingency plans for SO_2.

Revisions to the South Dakota Air Quality Episodes rules ARSD 74:36:03:01 ''Air pollution emergency episode'' and ARSD 74:36:03:02 ''Episode emergency contingency plan'' were most recently approved on June 27, 2014 (79 FR 36425). We find that South Dakota's air pollution emergency rules include $PM_{2.5}$, and SO_2; establish stages of episode criteria; provide for public announcement whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episode) for $PM_{2.5}$ and SO_2. The SIP therefore meets the requirements of 110(a)(2)(G). Based on the above analysis, we propose approval of South Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

9. *Future SIP revisions:* Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) ''[f]rom time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard[;] and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the [SIP] is substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements under this [Act].''

South Dakota's statutory provision at SDCL 34A–1–6 gives DENR sufficient authority to meet the requirements of 110(a)(2)(H). Therefore, we propose to approve South Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(H).

10. *Consultation with government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) requires that each SIP ''meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).''

The State has demonstrated it has the authority and rules in place through its certifications (contained within this docket) to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the

[8] Discussion of the requirements for meeting CAA section 303 is provided in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under ''VI. Analysis of State Submittals, 8. Emergency powers.''

[9] *See* our proposed rulemaking at 79 FR 71053 (December 1, 2014), section VI.8 for a complete discussion on how SDCL section 34A–1–45 and ARSD section 74:36:03:01 provide authority comparable to that in CAA section 303.

[10] Memorandum from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Guidance on SIP Elements Required under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) Standards (NAAQS), at p. 6–7 (Sep. 25, 2009).

[11] Memorandum from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Guidance on SIP Elements Required under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) Standards (NAAQS), at p. 6–7 (Sep. 25, 2009).

SIP applies, consistent with the requirements of CAA section 121. Furthermore, the EPA previously addressed the requirements of CAA section 127 for the South Dakota SIP and determined public notification requirements are appropriate (45 FR 58525, Sept. 4, 1980).

As previously discussed, the State has a SIP-approved PSD program that incorporates by reference the federal program at 40 CFR 52.21. The EPA has further evaluated South Dakota's SIP approved PSD program in this proposed action under element (C) and determined the State has satisfied the requirements of element 110(a)(2)(C), as previously noted. Therefore, the State has also satisfied the requirements of element 110(a)(2)(J).

Finally, with regard to the applicable requirements for visibility protection, the EPA recognizes states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we propose to approve the South Dakota SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

11. *Air quality and modeling/data:* Section 110(a)(2)(K) requires each SIP to provide for: (i) ''the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a [NAAQS]; and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.''

South Dakota's PSD program incorporates by reference the federal program at 40 CFR 52.21, including the provision at 40 CFR 52.21(l)(1) requiring that estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, and the provision at 40 CFR 52.21(l)(2) requiring that modification or substitution of a model specified in Appendix W must be approved by the Administrator.

Additionally, SDLC section 34A–1–1, 34A–1–10, and 1–40–31 provide the Department with the authority to advise, consult, and cooperate with the EPA and provide the EPA with public records, such as air quality modeling. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed. Therefore, we propose to approve the South Dakota SIP as meeting the CAA section 110(a)(2)(K) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

12. Permitting Fees

Section 110(a)(2)(L) requires ''the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this [Act], a fee sufficient to cover[:] (i) the reasonable costs of reviewing and acting upon any application for such a permit[;] and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under [title] V.''

The funding sources used for the PSD permit reviews conducted by South Dakota derive from EPA grant and matching State general funds.[12] In light of the State's experience that funding from grants and general funds has been sufficient to operate a successful PSD program, it is reasonable that the PSD permit applicants are not charged any permit-specific fees.

We also note that all the State SIPs we are proposing to approve in this action cite the regulation that provides for collection of permitting fees under the State's EPA-approved title V permit program (ARSD 74:37:01), which we approved and became effective February 28, 1996 (61 FR 2720, Jan. 29, 1996). Therefore, based on the State's experience in relying on the grant and general funds for PSD permits, and the use of title V fees to implement and enforce PSD permits once they are incorporated into title V permits, we propose to approve the submissions as supplemented by the State for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

13. Consultation/Participation by Affected Local Entities

Section 110(a)(2)(M) requires states to ''provide for consultation and participation [in SIP development] by local political subdivisions affected by [the SIP].''

The statutory provisions cited in South Dakota's SIP submittals (SDCL section 34–A–1 and 34A–1–10 *Environmental Protection,* contained within this docket) provide the South Dakota DENR with the authority to advise, consult, and cooperate with agencies of the state, local governments, industries, other states, interstate or inter-local agencies, the federal government, and with interested persons or groups and therefore meet the requirements of CAA section 110(a)(2)(M). We propose to approve South Dakota's SIP as meeting these requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

VII. What action is the EPA taking?

In this action, the EPA is proposing to approve infrastructure elements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS from the State's certifications as shown in Table 1. Elements we propose no action on are reflected in Table 2. A comprehensive summary of infrastructure elements organized by the EPA's proposed rule action are provided in Table 1 and Table 2.

TABLE 1—LIST OF SOUTH DAKOTA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO APPROVE

Proposed for approval
December 20, 2013 submittal—2010 SO_2 NAAQS:
(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
January 25, 2016 submittal—2012 $PM_{2.5}$ NAAQS:
(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).

[12] *See* Email from Brian Gustafson ''Question Regarding Permitting Fees for SD iSIP Action'' July 24, 2014, available within docket.

TABLE 2—LIST OF SOUTH DAKOTA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO TAKE NO ACTION ON

Proposed for no action (Revision to be made in separate rulemaking action.)
December 20, 2013 submittal—2010 SO_2 NAAQS:
(D)(i)(I) prongs 1 and 2.
January 25, 2016 submittal—2012 $PM_{2.5}$ NAAQS:
(D)(i)(I) prongs 1 and 2.

VIII. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action 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, Oct. 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, Aug. 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 the 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, Feb. 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 16, 2017.

Suzanne J. Bohan,

Acting Regional Administrator, Region 8.

[FR Doc. 2017–11573 Filed 6–5–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2017–0202; FRL–9962–40–Region 1]

Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Connecticut, New Hampshire, Rhode Island, and Vermont; Revisions to State Plan for Designated Facilities and Pollutants: New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve: Negative declarations for commercial and industrial solid waste incinerators for the State of Connecticut, the State of New Hampshire, the State of Rhode Island, and the State of Vermont; negative declarations for hospital/medical/infectious waste incinerators for the State of Rhode Island; and revisions to the state plan for existing large and small municipal waste combustors for the State of New Hampshire. This action is being made in accordance with sections 111 and 129 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2017–0202 at *https://www.regulations.gov,* or via email to *bird.patrick@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxics, & Indoor Programs Unit, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency,