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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 17, 2017.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2017–11681 Filed 6–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2013–0557; FRL–9963–29–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; Colorado

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 Colorado submitted to demonstrate that the State meets infrastructure requirements of the Clean Air 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–2013–0557 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 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 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 at 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 SIPs providing for implementation, maintenance, and enforcement of the NAAQS. The EPA has historically referred to these SIP submissions made to satisfy 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 those 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 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.

Infrastructure SIP submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that the existing SIPs for SO_2 and $PM_{2.5}$ already satisfy those requirements. EPA guidance on these provisions and their implementation may be found in the following documents: ''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'' (October 2, 2007); ''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)'' (Sep. 25, 2009); ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (Oct. 14, 2011); and ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' (Sept. 13, 2013).

III. What is the scope of this rulemaking?

The EPA is acting upon the SIP submissions from Colorado 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). This provision directs that, within three years after the promulgation of a NAAQS, states make SIP submissions that provide for the ''implementation, maintenance, and enforcement'' of the NAAQS. The statute imposes on states the duty to make these SIP submissions, and does not condition this requirement on the 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.

Section 110(a)(1) addresses the timing and general requirements for these infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The section 110(a)(2) list of required elements contains a variety of disparate provisions, some of which pertain to required legal authority, some to required substantive program provisions, and some to requirements for both authority and substantive program provisions.[1] The EPA has concluded that although the timing requirement in section 110(a)(1) is clear, some of the section 110(a)(2) language is ambiguous with respect to what is required for inclusion in an infrastructure SIP submission. For discussion of some of these ambiguities and the EPA's interpretation of them, see 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.

[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. The elements that are the subject of this action are:

- 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; 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.

Section VI, below, contains a detailed discussion of each of these elements.

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 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. Therefore, 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). Further, 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 Colorado address the infrastructure elements of sections 110(a)(1) and (2)?

The Colorado Department of Public Health and Environment (CDPHE) submitted certifications concerning Colorado's infrastructure SIP for the 2010 SO_2 NAAQS on July 10, 2013, and for the 2012 $PM_{2.5}$ NAAQS on December 1, 2015. Colorado's infrastructure certifications demonstrate how the State has plans in place that meet the applicable requirements of section 110 for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The Colorado infrastructure SIPs were subject to public notice and comment, as indicated in the cover letter of each certification, and are available within the electronic docket for today's proposed action at *www.regulations.gov.* These plans reference the current Air Quality Control Commission (AQCC) regulations and Colorado Revised Statutes (C.R.S.). The cited AQCC regulations are available at *https://www.colorado.gov/pacific/cdphe/aqcc-regs* and *http://www.lexisnexis.com/hottopics/colorado/.* Colorado's SIP, air pollution control regulations, and statutes that have been previously approved by the EPA and incorporated into the Colorado SIP can be found at 40 CFR 52.320.

VI. Analysis of the State Submittals

1. *Emission limits and other control measures:* Section 110(a)(2)(A) requires that SIPs 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.

Colorado's infrastructure SIP submissions identify existing EPA-approved SIP provisions limiting emissions of relevant pollutants. The State references a variety of SIP-approved Colorado AQCC regulations cited under element (C), including: Regulation 1, Particulates, Smokes, Carbon Monoxide, and Sulfur Dioxides; Regulation 3, Stationary Source Permitting and Air Pollution Emission Notice Requirements; Regulation 4, Woodburning Controls; Regulation 7, Control of Ozone via Ozone Precursors and Nitrogen Oxides; Regulation 11, Motor Vehicle Inspection; Regulation 16, Street Sanding and Sweeping; and Common Provisions Regulation. Subject to the following clarifications, the EPA proposes to find that SIP-approved AQCC regulations citied in Colorado's certifications provide enforceable emission limitations and other control measures, means or 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.

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, Colorado has no areas designated as nonattainment for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. Colorado's certifications (contained within this docket) generally listed provisions within its SIP which regulate pollutants through various programs, such as limits on emissions of particulate matter (PM) in Regulation 1, woodburning controls in Regulation 4, and the State's minor NSR and PSD programs in Regulation 3. This suffices, in the case of Colorado, 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 that are contrary to the CAA and to 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 contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

As a final clarification, in this action the EPA is also not proposing to approve or disapprove any existing state provision with regard to excess emissions during SSM operations at a facility. A number of states have SSM provisions that 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).

Subject to the above clarifications, the EPA is proposing to approve Colorado'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.''

The provisions for episode monitoring, data compilation and reporting, public availability of information, and annual network reviews are found in the statewide monitoring SIP (58 FR 49435, Sept. 23, 1993). As part of the monitoring SIP, Colorado submits an Annual Monitoring Network Plan (AMNP) each year for EPA approval. The EPA approved 2015 and 2016 network changes through an AMNP response letter (contained within the docket) mailed to CDPHE on December 22, 2016. The Colorado Air Pollution Control Division (APCD) also periodically submits a Quality Management Plan and a Quality Assurance Project Plan to the EPA. These plans cover procedures to monitor and analyze data.

In our August 19, 2015 rulemaking (80 FR 50205), we conditionally approved element (B) for the 2010 NO_2 NAAQS based on Colorado's commitment to install and operate a second near-road NO_2 monitoring site no later than December 31, 2015. In a letter dated February 17, 2016 (contained within this docket), the Colorado Air Pollution Control Division notified the EPA that the second near-road site in Denver became operational on October 1, 2015, thus satisfying the requirements of 40 CFR 58.10(a)(5)(iv).

We find Colorado's SIP adequate for the ambient air quality monitoring and data system requirements for the 2010

[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'' (Sep. 20, 1999).

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 for the 2010 SO_2 and 2012 $PM_{2.5}$ infrastructure requirement cite a variety of SIP-approved Colorado AQCC regulations that provide for enforcement of emission limits and control measures. These include Regulation 1, Particulates, Smokes, Carbon Monoxide, and Sulfur Dioxides; Regulation 3, Stationary Source Permitting and Air Pollution Emission Notice Requirements; Regulation 4, Woodburning Controls; Regulation 7, Control of Ozone via Ozone Precursors and Nitrogen Oxides; Regulation 11, Motor Vehicle Inspection; Regulation 16, Street Sanding and Sweeping; and Common Provisions Regulation.

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; this demonstration will also satisfy the requirements of element (D)(i)(II). To meet this requirement, Colorado cited SIP approved AQCC Regulation 3 *Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration.* The EPA is proposing to approve Colorado'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 PSD program in the SIP that covers all regulated pollutants including greenhouse gases (GHGs).

In addition to these requirements, there are four other revisions to the Colorado SIP that are necessary to meet the requirements of infrastructure element 110(a)(2)(C). These four revisions are related to (1) the Ozone Implementation NSR Update (November 29, 2005, 70 FR 71612); (2) the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (June 3, 2010, 75 FR 31514); (3) the NSR $PM_{2.5}$ Rule (May 16, 2008, 73 FR 28321); and (4) the final rulemaking entitled ''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, Oct. 20, 2010).

On January 9, 2012 (77 FR 1027), we approved revisions to Colorado's PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated on November 29, 2005 (70 FR 71612). As a result, the approved Colorado PSD program meets the 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 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), ''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.

The EPA has determined that Colorado's SIP is sufficient to satisfy elements (C), (D)(i)(II), and (J) with respect to GHGs, 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 Colorado's PSD program on January 25, 2016 (81 FR 3963). The approved Colorado PSD permitting program still contains some provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit's amended judgment. But the presence of these provisions in the previously-approved plan does not render the infrastructure SIP submission inadequate to satisfy Elements (C), (D)(i)(II) and (J). The SIP contains the currently necessary PSD requirements for applying the BACT requirement to greenhouse gas emissions from ''anyway sources.'' And the application of those requirements is not impeded by the

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

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 Colorado'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.), 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 decision. 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 Colorado'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 May 11, 2012, the State submitted revisions to Regulation 3 that adopted all elements of the 2008 Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule. However, the submittal contained a definition of Major Source Baseline Date which was inconsistent with 40 CFR 51.166(b)(14)(i). On May 13, 2013, the State submitted revisions to Regulation 3 which incorporate the definition of Major Source Baseline Date which was consistent with 40 CFR 51.166(b)(14)(i). These submitted revisions make Colorado's PSD program up to date with respect to current requirements for $PM_{2.5}$. The EPA approved the necessary portions of Colorado's May 11, 2012 and May 13, 2013 submissions which incorporate the requirements of the 2008 $PM_{2.5}$ Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule on September 23, 2013 (78 FR 58186). Colorado's SIP-approved PSD program meets current requirements for $PM_{2.5}$. The EPA therefore is proposing to approve Colorado's SIP for the 2010 SO_2 and $PM_{2.5}$ 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 is found in Regulation 3 of the Colorado SIP, and was originally approved by the EPA as Regulation 3 of the SIP (see 68 FR 37744, June 25, 2003). Since approval of the minor NSR program, the State and the EPA have relied on the program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

The EPA is proposing to approve Colorado'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 prohibiting 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 prongs 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 or (prong 2) interfere with maintenance by any other state with respect to the same NAAQS. The two prongs 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 addressing the 2010 SO_2 and 2012 $PM_{2.5}$NAAQS with regard to prongs 3 (interference with PSD) and 4 (interference with visibility protection) of 110(a)(2)(D)(i). We are not addressing prongs 1 and 2 for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS in this action. These prongs will be addressed in a later rulemaking.

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

The PSD portion of section 110(a)(2)(D)(i)(II) 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, Colorado has such a program, and the EPA is therefore proposing to approve Colorado'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 Guidance on Infrastructure SIP Elements, 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. One way a state may satisfy prong 3 with respect to these sources is by citing EPA-approved nonattainment NSR provisions addressing any pollutants for which the state has designated nonattainment areas. Colorado has a SIP-approved nonattainment NSR program that ensures regulation of major sources and major modifications in nonattainment areas.[5]

As Colorado's SIP meets PSD requirements for all regulated NSR pollutants, and contains a fully approved nonattainment NSR program, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of element 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).[6]

Colorado submitted a regional haze SIP to EPA on May 25, 2011. The EPA approved Colorado's regional haze SIP on December 31, 2012 (77 FR 76871). In early 2013, WildEarth Guardians and the National Parks Conservation Association (NPCA) filed separate petitions for reconsideration of certain aspects of the EPA's approval of the Colorado's regional haze SIP.[7] After these petitions were filed, a settlement agreement was entered into concerning the Craig Generating Station by the petitioners, the EPA, CDPHE, and Tri-State Generation and Transmission Association, Inc., and filed with the court on July 10, 2014.[8] In accordance with the settlement agreement, the EPA requested and the court granted a voluntary remand to the EPA of the portions of the EPA's December 2012 regional haze SIP approval that related to Craig Unit 1. Because the additional controls at the Craig facility will be implemented through a revision to the Colorado regional haze SIP that the EPA has not yet acted on, the EPA cannot rely on this approval as automatically satisfying prong 4.

The EPA does, however, consider other aspects of our approval of Colorado's regional haze SIP to be sufficient to satisfy this requirement. Specifically, the EPA found that Colorado met its 40 CFR 51.308(d)(3)(ii) requirements to include in its regional haze SIP all measures necessary to (1) obtain its share of the emission reductions needed to meet the reasonable progress goals for any other state's Class I area to which Colorado causes or contributes to visibility impairment, and; (2) ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through a regional planning process. Colorado participated in a regional planning process with the Western Regional Air Partnership (WRAP). In the regional planning process, Colorado analyzed the WRAP modeling and determined that emissions from the State do not significantly impact other states' Class I areas.[9] Colorado accepted and incorporated the WRAP-developed visibility modeling into its regional haze SIP, and the SIP included the controls assumed in the modeling. For these reasons, the EPA determined that Colorado had satisfied the Regional Haze Rule requirements for consultation and included controls in the SIP sufficient to address the relevant requirements related to impacts on Class I areas in other states. Therefore, we are proposing to approve the Colorado SIP as meeting the requirements of prong 4 of CAA section 110(a)(2)(D)(i) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

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. 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), Colorado's SIP-approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD.[10] This suffices to meet the notice requirement of section 126(a).

Colorado 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 satisfies 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

[4] See 2013 Guidance on Infrastructure SIP Elements.

[5] *See* Colorado Regulation No. 3, Part D, Section V, which was most recently approved by EPA in a final rulemaking dated January 25, 2016 (81 FR 3963).

[6] *See* 2013 Guidance on Infrastructure SIP Elements. In addition, 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).

[7] WildEarth Guardians filed its petition on February 25, 2013, and NPCA filed its petition on March 1, 2013.

[8] This settlement agreement is included in the docket for this action; *see also* Proposed Settlement Agreement, 79 FR 47636 (Aug. 14, 2014).

[9] *See* our proposed rulemaking on the Colorado regional Haze SIP, 77 FR 18052, March 26, 2012.

[10] See Colorado Regulation 3, Part D. IV.A.1.

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.*

Colorado law, specifically the Colorado Air Pollution Prevention and Control Act (APPCA) Sections 25–7–105, 25–7–111, 42–4–301 to 42–4–316, 42–4–414 and Article 7 of Title 25, provides adequate authority for the State of Colorado APCD and AQCC 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 along with required state matching funds to provide funding necessary to carry out Colorado's SIP requirements. The regulations cited by Colorado in its certifications, which are 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 Colorado'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 that 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 [11].

On April 10, 2012 (77 FR 21453) the EPA approved the Procedural Rules, Section 1.11.0, as adopted by the AQCC on January 16, 1998, into the Colorado SIP as meeting the requirements of section 128 of the Act. Section 1.11.0 specifies certain requirements regarding the composition of the AQCC and disclosure by its members of potential conflicts of interest. Details on how this portion of the Procedural Rules meets the requirements of section 128 are provided in our January 4, 2012 proposal notice (77 FR 235). In our April 10, 2012 action, we correspondingly approved Colorado's infrastructure SIP for the 1997 ozone NAAQS for element (E)(ii). Colorado'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 Colorado AQCC Regulations listed in the State's certifications (Regulations 1, 3, 7, and Common Provisions Regulation) and contained within this docket provide authority to establish a program for measurements and testing of sources, including requirements for sampling and testing. Air Pollutant Emission Notice (APEN) requirements are defined in Regulation 3 and requires stationary sources to report their emissions on a regular basis through APENs. Regulation 3 also requires that monitoring be performed in accordance with EPA-accepted procedures, and record keeping of air pollutants. Additionally, Regulation 3 provides for a permitting program that establishes emission limitations and standards. Emissions must be reported by sources to the State for correlation with applicable emissions limitations and standards. Monitoring may be required for both construction and operating permits.

Additionally, Colorado is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI), which is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, modifying 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. All states are required to submit a comprehensive emissions inventory every three years and to 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. Colorado made its latest update to the NEI on January 18, 2016. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the public at *http://www.epa.gov/ttn/chief/eiinformation.html.*

Based on the analysis above, we propose to approve the Colorado'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 [12]] 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 ensure prompt protection, then the Administrator has the 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. APPCA Sections 25–7–112 and 25–7–113 provide APCD with general emergency authority comparable to that in section 303 of the Act.[13]

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

[11] 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.

[12] 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 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under ''VI. Analysis of State Submittals, 8. Emergency powers.''

[13] *See* our proposed rulemaking at 80 FR 3098 (June 1, 2015), section VI.8 for a complete discussion on how APPCA Sections 25–7–112 and 35–7–113 provide authority comparable to that in CAA section 303.

if the NAAQS is covered by those regulations. The Denver Emergency Episode Plan (applicable to the Denver metropolitan area) addresses ozone, particulate matter, and carbon monoxide, and satisfies the requirements of 40 CFR part 51, subpart H (See 74 FR 47888). Furthermore, Colorado is classified as Priority III for SO_2 and accordingly is not required to submit emergency episode contingency plans for SO_2. Therefore, we propose approval of Colorado'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].''

The Colorado APPCA Sections 25–7–105(1)(a)(I) gives the AQCC sufficient authority to meet the requirements of 110(a)(2)(H). Therefore, we propose to approve Colorado's SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

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 that 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 SIP applies, consistent with the requirements of CAA section 121. Furthermore, the EPA previously addressed the requirements of CAA section 127 for the Colorado SIP and determined public notification requirements are appropriate (45 FR 53147, Aug. 11, 1980).

As discussed above, 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 Colorado'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 noted above. 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 Colorado 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.''

Colorado's Regulation 3 Part A.VIII (Technical Modeling and Monitoring Requirements) requires that estimates of ambient air concentrations be based on applicable air quality models approved by the EPA. Final approval for Regulation 3 Part A.VIII became effective February 20, 1997 (62 FR 2910). Additionally, Regulation 3 Part D, Section VI.C. requires the Division to transmit to the Administrator of the EPA a copy of each permit application relating to a major stationary source or major modification subject to this regulation, and provide notice of every action related to the consideration of such permit.

Colorado has broad authority to develop and implement an air quality control program that includes conducting air quality modeling to predict the effect on ambient air quality of any emissions of any air pollutant for which a NAAQS has been promulgated and provide that modeling data to the EPA. This broad authority can be found in 25–7–102, C.R.S., which requires that emission control measures be evaluated against economic, environmental, energy and other impacts, and indirectly authorizes modeling activities. Colorado also has broad authority to conduct modeling and submit supporting data to the EPA to satisfy federal nonattainment area requirements (25–7–105, 25–7–205.1, and 25–7–301, C.R.S.). The State also has the authority to submit any modeling data to the EPA on request under the Colorado Open Records Act (24–72–201 to 24–72–309, C.R.S.).

As a result, the SIP provides for the air quality modeling that the Administrator has prescribed. Therefore, we propose to approve the Colorado 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 State of Colorado requires the owner or operator of a major stationary source to pay the Division any fee necessary to cover the reasonable costs of reviewing and acting upon any permit application. The collection of fees is described in AQCC Regulation 3, Part A.

We also note that the State has an EPA-approved title V permit program (60 FR 4563, Jan. 24, 1995) that provides for collection of permitting fees. Final approval of the title V operating permit program became effective October 16, 2000 (65 FR 49919). Interim approval of Colorado's title V operating permit program became effective February 23, 1995 (60 FR 4563). As discussed in the proposed interim approval of the title V program (59 FR 52123, October 14, 1994), the State demonstrated that the fees collected were sufficient to administer the program.

Therefore, based on the State's experience in relying on the collection of fees as described in AQCC Regulation 3, 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 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]

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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.