comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Mrs. Amy Johansen, (215) 814–2156, or by email at *johansen.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 26, 2015, EPA published a notice of proposed rulemaking (80 FR 30015). In the NPR, EPA proposed disapproval of a revision to the Delaware SIP related to nonattainment NSR preconstruction permit program requirements for emission offsets. In that action, EPA proposed disapproval, because the submittal did not satisfy the requirements of Clean Air Act (CAA) or the Federal implementing regulations, which establish the criteria under which the owner or operator of a new or modified major stationary source must obtain the required emission offsets "from the same source or other sources in the same nonattainment area" with limited exceptions, for Delaware's nonattainment NSR preconstruction permitting program. In addition, EPA proposed disapproval of the SIP revision because Delaware exercises authorities that are reserved for EPA under section 107 of the CAA.

Dated: June 25, 2015.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2015–16919 Filed 7–14–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0974, FRL–9930–42–Region–8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of North Dakota to demonstrate the State meets infrastructure requirements of the Clean Air Act (Act or CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on March 12, 2008, lead (Pb) on October 15, 2008 and nitrogen dioxide (NO_2) on January 22, 2010. EPA is also proposing to approve element 4 of CAA section 110(a)(2)(D)(i)(II) for the 2006 fine particulate matter ($PM_{2.5}$) NAAQS. Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA.

DATES: Written comments must be received on or before August 14, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket Identification Number EPA–R08–OAR–2012–0974. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in the hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 8, Office of Partnership and Regulatory Assistance, Air Program, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m.–4:00 p.m., excluding federal holidays. An electronic copy of the State's SIP compilation is also available at *http://www.epa.gov/region8/air/sip.html.*

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 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 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 March 12, 2008, EPA promulgated a new NAAQS for ozone, revising the levels of the primary and secondary 8-

hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). Subsequently, on October 15, 2008, EPA revised the level of the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter (μg/m^3) to 0.15 μg/m^3 (73 FR 66964). On January 22, 2010, EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb) while retaining the annual standard of 53 ppb. The 2010 NO_2 NAAQS is expressed as the three year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations. The secondary NO_2 NAAQS remains unchanged at 53 ppb (75 FR 6474, Feb. 9, 2010).

EPA promulgated a revised NAAQS for $PM_{2.5}$ on October 17, 2006, tightening the level of the 24-hour standard to 35 μg/m^3 and retaining the level of the annual $PM_{2.5}$ standard at 15 μg/m^3. EPA approved element 110(a)(2)(D)(i)(I) (discussed below) of North Dakota's infrastructure SIP for this NAAQS on July 29, 2013 (78 FR 45457). EPA approved all other infrastructure elements (aside from element 110(a)(2)(D)(i)(II) regarding visibility) of North Dakota's 2006 $PM_{2.5}$ infrastructure SIP on July 30, 2013 (78 FR 45866). We are acting on the visibility element in this action.

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 ozone, Pb, and NO_2 already meet those requirements. 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, 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, 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?

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

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA; "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A; and nonattainment new source review (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] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

Examples of some of these ambiguities and the context in which 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 NO2 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, 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 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 EPA; and (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186, Dec. 31, 2002, as amended by 72 FR 32526, June 13, 2007. ("NSR Reform").

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

[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.

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, 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 North Dakota address the infrastructure elements of sections 110(a)(1) and (2)?

The North Dakota Department of Health (Department or NDDH) submitted certification of North Dakota's infrastructure SIP for the 2008 Pb NAAQS on May 25, 2012, and joint certifications for the 2008 ozone and the 2010 NO_2 NAAQS on March 7, 2013. North Dakota's infrastructure certifications demonstrate how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. These plans reference the current North Dakota Air Pollution Control Rules (NDAC) and North Dakota Century Code (NDCC). These submittals are available within the electronic docket for today's proposed action at *www.regulations.gov*. The NDAC and NDCC referenced in the submittals are publicly available at *https://www.ndhealth.gov/aq/AirRules.htm* and *http://www.legis.nd.gov/general-information/north-dakota-century-code*. North Dakota's SIP, air pollution control regulations, and statutes that have been previously approved by EPA and incorporated into the North Dakota SIP can be found at 40 CFR 52.1820.

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 NDAC and cited in North 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 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS, subject to the following clarifications.

First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. Furthermore, North Dakota has no areas designated as nonattainment for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. North 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 North Dakota, to meet the requirements of section 110(a)(2)(A) for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

Second, as previously discussed, 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, including North Dakota, 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, 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.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing state provision with regard to excess emissions during SSM of operations at a facility. A number of states, including North Dakota, 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, EPA is proposing to approve North Dakota's infrastructure SIP for the 2008 Pb, 2008 ozone, and 2010 NO_2 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."

Ambient monitoring is covered in Chapter 6 of the North Dakota SIP. It provides for the design and operation of a monitoring network, reporting of data obtained from the monitors, and annual network review including notification to

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

EPA of any changes, and public notification of exceedances of NAAQS. EPA approved North Dakota's Division of Air Quality's (DAQ) 2013 Ambient Air Monitoring Network Plan for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS on April 2, 2015. North Dakota's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B) for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. As explained elsewhere in this action, EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. 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).

PSD Requirements

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

North 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 EPA has promulgated prior to the revised date of incorporation by reference.

On June 3, 2010 (75 FR 31291), we approved a North Dakota SIP revision that revised the date of incorporation by reference of the federal PSD program to August 1, 2007. That revision addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated in 2005 (70 FR 71612). As a result, the approved North Dakota PSD program meets current requirements for ozone.

Similarly, on October 23, 2012 (77 FR 64736), we approved a North Dakota SIP revision that revised the date of incorporation by reference of the federal PSD program to July 2, 2010. As explained in the notice for that action, that revision addressed the PSD requirements related to GHGs provided in EPA's June 3, 2010 "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (75 FR 31514). The approved North Dakota PSD program thus also meets current requirements for GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions, *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that 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 Supreme Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.,* 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, EPA has determined that North Dakota'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 EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved North Dakota PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy elements (C), (D)(i)(II), and (J). The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect EPA's proposed approval of North Dakota's infrastructure SIP as to the requirements of elements (C), (D)(i)(II), and (J).

Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, 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 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). 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 EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered

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 particulate matter nonattainment areas.

The 2008 implementation rule addressed by the court decision, "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)," (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 Implementation rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the court's decision. Accordingly, EPA's proposed approval of North 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 EPA's action on the present infrastructure action. 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 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). EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of element (C).

As mentioned above, EPA previously approved a North Dakota SIP revision that revised the date of incorporation by reference of the federal PSD program to July 2, 2010 (77 FR 64736, Oct. 23, 2012). This SIP revision also addressed the requirements of the 2008 $PM_{2.5}$ NSR Implementation Rule. On January 1, 2012, the State submitted revisions to chapter 33–15–15–01.2, Scope, of the NDAC that adopted all elements of the 2010 $PM_{2.5}$ Increment Rule by incorporating by reference the federal PSD program at 40 CFR part 52, section 21, as it existed on January 1, 2012. The submitted revisions make North Dakota's PSD program up to date with respect to current requirements for $PM_{2.5}$. EPA approved the necessary portions of North Dakota's January 24, 2013 submission which incorporate the requirements of the 2010 $PM_{2.5}$ Increment Rule on July 30, 2013 (78 FR 45866). North Dakota's SIP-approved PSD program meets current requirements for $PM_{2.5}$. EPA therefore is proposing to approve North Dakota's SIP for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS with respect to the requirement in section 110(a)(2)(C) to include a PSD 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 EPA on August 21, 1995 (60 FR 43401). Since approval of the minor NSR program, the State and 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.

EPA is proposing to approve North Dakota's infrastructure SIP for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the enforcement, 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 related to the impacts of air pollutants transported across state lines. The two elements under 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 (element 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (element 2) interfere with maintenance by any other state with respect to the same NAAQS. The two elements under 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 (element 3) to prevent significant deterioration of air quality or (element 4) to protect visibility. In this action, EPA is addressing all four elements of CAA section 110(a)(2)(D)(i).

EPA is addressing the 2008 Pb and 2010 NO_2 NAAQS with regard to elements 1 (significant contribution) and 2 (interference with maintenance). EPA is addressing elements 3 (interference with PSD) and 4 (interference with visibility protection) of 110(a)(2)(D)(i) with regard to the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS, and element 4 of 110(a)(2)(D)(i) with regard to the 2006 $PM_{2.5}$ NAAQS. We are not addressing elements 1 and 2 for the 2008 ozone NAAQS in this action. These elements will be addressed in a later rulemaking.

A. Evaluation of Significant Contribution to Nonattainment and Interference With Maintenance

2008 Pb NAAQS

North Dakota's analysis of potential interstate transport for the 2008 Pb NAAQS includes considerations of Pb emissions at sources near the State's borders and the distance of Pb sources in North Dakota to the nearest nonattainment area. The State's analysis is available in the docket for this action.

As noted in our 2011 Memo, there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases. For this reason, EPA found that the "requirements of subsection (2)(D)(i)(I) (prongs 1 and 2) could be satisfied through a state's assessment as to whether or not emissions from Pb sources located in close proximity to their state borders have emissions that impact the neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state." [3] In that guidance document, EPA further specified that any source appeared unlikely to contribute significantly to nonattainment unless it was located less than 2 miles from a state border and emitted at least 0.5 tons per year of Pb.

[3] 2011 Memo, at pg 8.

North Dakota's 110(a)(2)(D)(i)(I) analysis specifically noted that there are no sources in the State that meet both of these criteria. EPA concurs with the State's analysis and conclusion that no North Dakota sources have the combination of Pb emission levels and proximity to nearby nonattainment or maintenance areas to contribute significantly to nonattainment in or interfere with maintenance by other states for this NAAQS. North Dakota's SIP is therefore adequate to ensure that such impacts do not occur. We are proposing to approve North Dakota's submission in that its SIP meets the requirements of section 110(a)(2)(D)(i) for the 2008 Pb NAAQS.

2010 NO_2 NAAQS

North Dakota's 2010 NO_2 transport analysis for element 1 of 110(a)(2)(D)(i) notes that there are no designated nonattainment areas for the 2010 NO_2 NAAQS. The State asserts that, because there are no nonattainment areas for this NAAQS, North Dakota does not significantly contribute to nonattainment.

North Dakota's analysis for element 2 of 110(a)(2)(D)(i) considered the distance to the South Coast Air Basin in California, the only NO_2 maintenance area in the U.S., as well as the low monitored NO_2 values in North Dakota and the historically decreasing NO_2 emission levels in the State. North Dakota also noted that it anticipated further decreases in NO_X emissions going forward, specifically noting the decreases resulting from the State's regional haze SIP. The State's analysis is available in the docket for this action. EPA concurs with the technical components of North Dakota's 2010 NO_2 transport analyses for both elements 1 and 2, but clarifies that element 1 is not specific to designated nonattainment areas. In addition to the factors considered in the State's analysis, EPA also notes that the highest monitored NO_2 design values in each state bordering or near North Dakota are significantly below the NAAQS (see Table 2, below). This fact further supports the State's contention that significant contribution to nonattainment or interference with maintenance of the NO_2 NAAQS from North Dakota is very unlikely based on the lack of relatively nearby areas with high NO_2. This is especially relevant for element 2 (interference with maintenance), because in addition to the lack of nonattainment areas, there are also no areas near the State approaching violation of the 2010 NO_2 NAAQS which might therefore have difficulty with maintenance of the standard.

TABLE 2—HIGHEST MONITORED 2010 NO_2 NAAQS DESIGN VALUES

State	2011–2013 design value	% of NAAQS (100 ppb)
Minnesota	46 ppb	46
Montana	46 ppb [4]	46
South Dakota	37 ppb	37
Wyoming	35 ppb	35

* Source: *http://www.epa.gov/airtrends/values.html.*

In addition to the monitored levels of NO_2 in states near North Dakota being well below the NAAQS, North Dakota's highest design value from 2011–2013 was also significantly below this NAAQS (37 ppb).[5]

Based on all of these factors, EPA concurs with the State's conclusion that North Dakota does not contribute significantly to nonattainment or interfere with maintenance of the 2010 NO_2 NAAQS in other states. EPA is therefore proposing to determine that North Dakota's SIP includes adequate provisions to prohibit sources or other emission activities within the State from emitting NO_2 in amounts that will contribute significantly to nonattainment in or interfere with maintenance by any other state with respect specifically to the NO_2 NAAQS.

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

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 EPA's PSD implementation rule(s).[6] As discussed in section VI.3 of this proposed action, North Dakota has such a PSD-permitting program.

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. North 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 North Dakota's SIP meets structural PSD requirements for all regulated NSR pollutants, and does not have any nonattainment areas, 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 2008 Ozone, 2008 Pb and 2010 NO_2 NAAQS.

C. Evaluation of Interference With Measures To Protect Visibility

The determination of whether the CAA section 110(a)(2)(D)(i)(II) requirement for visibility is satisfied is closely connected to EPA's Regional Haze (RH) program. Under the RH program, each state with a Class I area is required to submit a SIP with reasonable progress goals for each such area that provides for an improvement in visibility for the most impaired days and ensures no degradation of the best days. CAA § 169A.

Because of the often significant impacts on visibility from the interstate transport of pollutants, we interpret the provisions of CAA section 110(a)(2)(D)(i)(II) described above as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. This is consistent with the requirements in the RH program which explicitly require each state to address its share of the emission reductions needed to meet the reasonable progress goals for

[4] Montana's maximum design value was calculated using EPA's AirData Web site, at *http://www.epa.gov/airquality/airdata/ad_rep_mon.html.*

[5] *http://www.epa.gov/airtrends/values.html.*

[6] See 2013 Memo.

surrounding Class I areas. 64 FR 35714, 35735 (July 1, 1999). States working together through a regional planning process are required to address an agreed upon share of their contribution to visibility impairment in the Class I areas of their neighbors. Given these requirements in the RH program we have concluded that a fully approved RH SIP satisfies the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility.

In the absence of a fully approved RH SIP, a state can still make a demonstration that its SIP satisfies the visibility requirements of section 110(a)(2)(D)(i)(II).[7] States worked through regional planning organizations (RPOs), such as the Western Regional Air Partnership (WRAP) in the case of North Dakota, to develop strategies to address RH. To help states in establishing reasonable progress goals, the RPOs modeled future visibility conditions. The modeling assumed emissions reductions from each state, based on extensive consultation among the states as to appropriate strategies for addressing haze. In setting reasonable progress goals, states generally relied on this modeling. As a result, we generally consider a SIP that ensures emission reductions commensurate with the assumptions underlying the reasonable progress goals to meet the visibility requirement of CAA section 110(a)(2)(D)(i)(II).

In its 2006 $PM_{2.5}$, 2008 ozone, 2008 Pb and 2010 NO_2 infrastructure certifications, North Dakota points to existing portions in the North Dakota SIP, specifically referencing the North Dakota RH SIP, to certify that the State meets the visibility requirements of section 110(a)(2)(D)(i). For the 2006 $PM_{2.5}$, 2008 ozone, 2008 Pb and 2010 NO_2 NAAQS, the State also references the PSD (NDAC 33–15–15) and Visibility Protection (NDAC 33–15–19) portions of its SIP, as well as EPA's RH federal implementation plan (FIP).[8] While Pb emissions have less impact on visibility, North Dakota addressed Pb no differently than other NAAQS in its 2008 Pb certification. Regardless, EPA noted in the 2013 Memo that "Pb-related visibility impacts were found to be insignificant," and that "significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source."[9] As stated earlier in this section, North Dakota does not have any Pb sources near bordering states.

In this action, we are proposing to find that the emissions reductions approved into North Dakota's RH SIP are sufficient to ensure that emissions from sources within the State do not interfere with the reasonable progress goals of nearby states. North Dakota participated in a regional planning process with the WRAP. In the regional planning process, North Dakota accepted and incorporated the WRAP-developed visibility modeling into its RH SIP, and the SIP included the controls assumed in the modeling.

EPA did not fully approve the North Dakota RH SIP, as we partially disapproved, among other elements, the State's selection of NO_X Best Available Retrofit Technology (BART) controls for Great River Energy's Coal Creek Station. 77 FR 20894 (April 6, 2012). As a result of our partial disapproval, North Dakota's SIP does not ensure NO_X emission reductions from Coal Creek Station, emission reductions which were assumed in the WRAP's visibility modeling that was relied on in setting reasonable progress goals in nearby states.[10] We note, however, that the North Dakota RH SIP also adopted NO_X controls that were not included in the WRAP's modeling for Otter Tail Power Company's Coyote Station. EPA approved these controls into the North Dakota RH SIP as part of our April 6, 2012 final action. The SIP provision will reduce NO_X emissions at Coyote Station by approximately 4,213 tons per year, a larger decrease in emissions than the assumed NO_X BART reductions for Coal Creek Station of approximately 3,200 tons per year. As Coal Creek and Coyote Stations are roughly 32 miles apart, a relatively short distance, the visibility impacts from NO_X emission reductions at either source on out-of-state Class I areas would be similar.

Because the reductions in North Dakota's approved RH SIP are greater than those assumed by the WRAP modeling, EPA is proposing to find that North Dakota's SIP includes controls sufficient to address the relevant requirements related to impacts on Class I areas in other states.

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) of the CAA 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 EPA (Administrator) regarding sources violating the "interstate transport" provisions of section 110(a)(2)(D)(i). Section 115 of the CAA similarly pertains to international transport of air pollution.

With regard to section 126(a), North Dakota's SIP-approved PSD program requires notice of proposed new sources or modifications to states whose lands may be significantly affected by emissions from the source or modification (see NDAC 33–15–15–01.2(q)(2)(d)). This provision satisfies the notice requirement of section 126(a).

North 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 2008 ozone, 2008 Pb and 2010 NO_2 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.*

NDCC 23–25–03 provides adequate authority for the State of North Dakota and the Department to carry out its SIP obligations with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. The State receives section 103 and 105 grant funds through its Performance Partnership Grant from EPA along with

[7] See 2013 Memo at 34. See also 76 FR 22036 (April 20, 2011) (EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP).

[8] EPA's final action including a partial approval, partial disapproval and FIP of the North Dakota RH SIP was published in the **Federal Register** April 6, 2012 (77 FR 20894).

[9] See 2013 Memo at 33–34.

[10] EPA notes that we also disapproved and promulgated a FIP for the State's reasonable progress determination for Basin Electric's Antelope Valley Station.

required state matching funds to provide funding necessary to carry out North Dakota's SIP requirements. North Dakota's resources meet the requirements of CAA section 110(a)(2)(E).

With respect to section 110(a)(2)(E)(iii), the regulations cited by North Dakota in their certifications and verified through additional communication [11] (NDCC 23–25–02(01), 33–15–04–02, 23–01–05(02), 23–25–03(5), and 23–25–10) 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 North Dakota's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2008 Pb, 2008 ozone, and 2010 NO_2 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.

On July 30, 2013 (78 FR 45866) EPA approved revised language in North Dakota's SIP, chapter 2, section 15, Respecting Boards to include provisions for addressing conflict of interest requirements. Details on how this portion of chapter 2, section 15 rules meet the requirements of section 128 are provided in our May 13, 2013 proposal notice (78 FR 27898). North 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 2008 Pb, 2008 ozone, and 2010 NO_2 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 North Dakota statutory provisions listed in the State's certifications (NDCC 23–25–03) and contained within this docket provide authority to establish a program for measurement and testing of sources, including requirements for sampling and testing. North Dakota's SIP-approved minor source and PSD programs provide for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting. The State cites several regulations (NDAC 33–15–14–02.9, 33–15–14–03.6, 33–15–14–06.5 and contained within this docket) requiring monitoring of emissions from stationary sources, recordkeeping and reporting of emissions, and monitoring date. Source surveillance is also addressed in Chapter 8 of the SIP. This chapter provides for the permitting of sources, inspection of the sources, recordkeeping and reporting by sources, and compliance determinations. Section 8.2 of the SIP commits the Department to the correlation of data with the applicable requirements. All reports are available for public inspection in accordance with NDAC 33–15–01–16.1.

Additionally, North 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. 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. North Dakota made its latest update to the NEI on October 23, 2014. 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 North Dakota SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2008 Pb, 2008 ozone, and 2010 NO_2 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] and adequate contingency plans to implement such authority."

Under CAA section 303, the EPA 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.[12] 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 EPA subsequently files a civil suit.

Chapter 23–25 of the NDCC provides relevant language and authority for "Air Pollution Control." The purpose of this chapter is "to achieve and maintain the best air quality possible" and to "protect human health, welfare and property, [and] prevent injury to plant and animal life" (NDCC 23–25–01(2)). NDCC 23–25–01 defines "air pollution" as "the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life or property." As such, the chapter aims to protect all three areas required by section 303; human health, welfare, and environment. The "Air Pollution Control" chapter provides general grants of authority to maintain actions in certain situations. We find these grants provide comparable authority to that provided in Section 303. Furthermore, the NDAC 33–15–01–15(1) makes it unlawful to "permit or cause air pollution" as defined in NDCC 23–25–01. A person causing or contributing to emissions that endanger public health, welfare, or the environment, would be causing "air pollution" within the meaning of North Dakota law, and would therefore be in

[11] *See* Email from Tom Bachman "Request for Clarificaitons_ND iSIP 2008 ozone, 2008 Pb, and 2010 NO2 NAAAQS" April 13, 2015, available within docket.

[12] A 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 p.m.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."

violation of NDAC 33–15–01–15(1). This could occur in either an emergency or non-emergency situation.[13]

NDCC 23–25–10(5) provides that "the department has the authority to maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter." Under NDCC 23–25–10(5), the Department has the authority to bring an action to enjoin a violation of NDCC 23–25 or its rules. The Department may seek a court order to restrain a source from causing or contributing to emissions that endanger public health, welfare, or the environment. In an emergency, this may take the form of an injunction or temporary restraining order (*see* NDCC 32–06–02).[14] Therefore, the NDDH has the authority to seek judicial actions during emergency situations.

North Dakota's statutes also provide the NDDH with the authority to issue administrative orders and emergency rules to protect the public health, welfare, and the environment under certain circumstances. NDCC 23–25–08, as cited in North Dakota's SIP submittals, authorizes that in the event of "an emergency requiring immediate action to protect the public health and safety," the NDDH has the authority to "issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary" to meet the emergency. The emergency order is effective immediately. Any person who violates the order is subject to enforcement, penalties, and injunctions under NDCC 23–25–10.

Furthermore, as cited in North Dakota's SIP submittals, the NDDH has the authority to "use an emergency adjudicative proceeding, in its discretion, in an emergency situation involving imminent peril to the public health, safety, or welfare" (NDCC 28–32–32). Accordingly, "in an emergency, the administrative agency may take action pursuant to a specific statute as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare" (NDCC–28–32–32.1). In the absence of a specific statute requiring other administrative action, "the administrative agency shall issue an order" (NDCC 28–32–32(4)).

Further supplemental authority is found in a broad provision, cited by the State in their SIP submittals, granting additional authority to the NDDH. The NDDH has the authority to "[i]ssue such orders as may be necessary to effectuate the purposes" of the "Air Pollution Control" chapter NDCC 23–25–03.5. These orders can be enforced "by all appropriate administrative and judicial procedures" (NDCC 23–25–03.5). Thus, this broad grant of authority includes the authority to issue administrative orders during air pollution emergencies which would disrupt protection of human health, welfare, and animal and plant life.

The combination of NDCC and NDAC provisions discussed above provide for authority comparable to section 303 to immediately bring suit to restrain, issue emergency orders against, and use special rule adoption procedures for applicable emergencies to take prompt administrative action against, any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment. We propose that they are sufficient to meet the authority requirement of CAA section 110(a)(2)(G).

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 done 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.

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. For example, if ambient concentrations of nitrogen dioxide in an area have exceeded 0.06 ppm (annual arithmetic mean), then the area is classified as a Priority I region, and the state must develop a contingency plan that meets the requirements of sections 51.151 and 51.152. North Dakota has not monitored any values above the priority cut point for ozone or NO_2.

Prevention of air pollution emergency episodes is addressed in Section 5 of North Dakota's SIP and was approved on May 31, 1972 (37 FR 10842). We find that North Dakota's air pollution emergency provisions establish stages of episode criteria (Section 5.2), provide for public announcement whenever any episode stage has been determined to exist (Section 5.3), and specify emission control actions to be taken at each episode stage (Section 5.5) consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51, subpart H (prevention of air pollution emergency episode) for ozone and NO_2.

As noted in the October 14, 2011 guidance,[15] based on EPA's experience to date with the Pb NAAQS and designating Pb nonattainment areas, EPA expects that an emergency episode associated with Pb emissions would be unlikely and, if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of Pb. Accordingly, EPA believes the central components of a contingency plan would be to reduce emissions from the source at issue and communicate with the public as needed. We note that 40 CFR part 51, subpart H (51.150–51.152) and 40 CFR part 51, Appendix L do not apply to Pb.

Based on the above analysis, we propose approval of North Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

9. *Future SIP revisions:* Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) From 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].

EPA approved relevant sections of the North Dakota SIP on September 17, 2012 (77 FR 57029). North Dakota's statutory provision at NDCC 23–25–03 provides adequate authority for the Department to carry out such revisions. Therefore, we propose to approve North 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

[13] *See* Email from Tom Bachman "Request for Clarifications_ND iSIP 2008 ozone, 2008 Pb, and 2010 NO2 NAAAQS" April 13, 2015, available within docket.

[14] *See* Email from Tom Bachman "Request for Clarifications_ND iSIP 2008 ozone, 2008 Pb, and 2010 NO_2 NAAAQS" April 13, 2015, available within docket.

[15] "Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)." Steve Page, OAQPS Director, October 14, 2011, at p. 13.

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 SIP applies, consistent with the requirements of CAA section 121. Furthermore, EPA previously addressed the requirements of CAA section 127 for the North Dakota SIP and determined public notification requirements are appropriate (45 FR 53475, Aug. 12, 1980).

As discussed above, the State has a SIP-approved PSD program that incorporates by reference the federal program at 40 CFR 52.21. EPA has further evaluated North 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 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, 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 North Dakota SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

11. *Air quality and modeling/data:* Section 110(a)(2)(K) requires each SIP 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.

North Dakota's PSD program requires estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, and incorporates by reference the provisions at 40 CFR 52.21(I)(2) requiring that modification or substitution of a model specified in Appendix W must be approved by the Administrator. Section 7.7, Air Quality Modeling, of North Dakota's SIP commits the Department to performing air quality modeling to predict the impact of a source on air quality, and providing data to EPA upon request. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed. Therefore, we propose to approve the North Dakota SIP as meeting the CAA section 110(a)(2)(K) for the 2008 Pb, 2008 ozone, and 2010 NO_2 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 cites the SIP approved fee provisions for construction permits (NDAC 33–15–23–02 approved at 62 FR 19224, April 21, 1997), which include costs of processing not covered by the application fee. 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 North Dakota's approved title V permit program (64 FR 32433, June 17, 1999). As discussed in that approval, the State demonstrated that the fees collected were sufficient to administer the program.

Therefore, based on the State's experience in relying on the funds collected through application and processing fees at NDAC 33–15–23, 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 2008 Pb, 2008 ozone, and 2010 NO_2 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 North Dakota's SIP submittals (NDCC 23–25–03 and 23–25–02, contained within this docket) meet the requirements of CAA section 110(a)(2)(M), so we propose to approve North Dakota's SIP as meeting these requirements for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

VII. What action is EPA taking?

In this action, EPA is proposing to approve the following infrastructure elements for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS: (A), (B), (C) with respect to minor NSR and PSD requirements, (D)(i)(II) elements 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA proposes to approve element 4 of 110(a)(2)(D)(i)(II) for the 2006 $PM_{2.5}$ NAAQS. Finally, EPA proposes approval of D(i)(I) elements 1 and 2 for the 2008 Pb, and 2010 NO_2 NAAQS. EPA will act separately on infrastructure element (D)(i)(I), interstate transport, for the 2008 ozone NAAQS.

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, 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 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 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: June 25, 2015.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2015–17380 Filed 7–14–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–2011–0009]

RIN 2137–AE71

Pipeline Safety: Expanding the Use of Excess Flow Valves in Gas Distribution Systems to Applications Other Than Single-Family Residences

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Excess Flow Valves (EFVs), which are safety devices installed on natural gas pipelines to reduce the risk of accidents, are currently required for new or replaced gas service lines servicing single-family residences (SFR). PHMSA is proposing to make changes to part 192 to expand this requirement to include new or replaced branched service lines servicing SFRs, multi-family residences, and small commercial entities consuming gas volumes not exceeding 1,000 Standard Cubic Feet per Hour (SCFH). PHMSA is also proposing to require the use of manual service line shut-off valve (*e.g.,* curb valves) for new or replaced service lines with meter capacities exceeding 1,000 SCFH. Finally, PHMSA is proposing that operators notify customers of their right to request installation of an EFV on service lines that are not being newly installed or replaced. PHMSA is proposing to delegate the question of who bears the cost of installing EFVs to service lines that are not being newly installed or replaced to the operator, customer, and the appropriate State regulatory agency.

DATES: Persons interested in submitting written comments on this Notice of Proposed Rulemaking (NPRM) must do so by September 14, 2015. PHMSA will consider late-filed comments so far as practicable.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2011–0009 by any of the following methods:

Comments should reference Docket No. PHMSA–2011–0009 and may be submitted in the following ways:

• *Web site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.

• *Fax:* 1–202–493–2251.

• *Mail:* U.S. Department of Transportation (DOT) Docket Operations Facility (M–30), West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* DOT Docket Operations Facility, West Building, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2011–0009, at the beginning of your comments. If you mail your comments, submit two copies. In order to confirm receipt of your comments, include a self-addressed, stamped postcard.

Note: All comments are posted electronically in their original form, without changes or edits, including any personal information.

Privacy Act Statement

Anyone can search the electronic comments associated with any docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000, (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: Mike Israni, by telephone at 202–366–4571, by fax at 202–366–4566, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE., PHP–1, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

An EFV is a mechanical safety device installed inside the natural gas service line between the street and residential meter. The EFV will "trip or close" if there is sufficient damage to the line to minimize the flow of gas through the line and thus, the amount of gas that escapes into the atmosphere. During normal use, the valve is kept pushed open against oncoming gas flow by a spring. EFVs are designed so that general usage, such as turning on appliances, will not shut the valve. However, during a significant increase in the flow of gas (*e.g.,* due to a damaged line), the spring cannot overcome the force of gas, and the valve will close and stay closed until the correct pressure is restored. When the correct pressure is restored, the EFV automatically resets itself.

On July 7, 1998, in South Riding, Virginia, a residential gas explosion resulted in one death and three injuries. It is not known if the explosion occurred on a branched or non-branched service line servicing an SFR; however, PHMSA believes that this proposed rule or its previous rule requiring EFVs on single lines serving SFRs would have mitigated the consequences of the explosion. An investigation by the National Transportation Safety Board (NTSB) found the explosion likely would not have occurred if an EFV had been installed for this single-family home. Similarly, PHMSA strongly believes this incident would have likely been would have been mitigated at a minimum. As a result, on June 22, 2001, the NTSB issued Safety Recommendation P–01–2, recommending that PHMSA require excess flow valves in all new and renewed gas service lines, regardless of a customer's classification, when the