• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 14, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2017–13671 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2013–0558; FRL–9964–30–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; North Dakota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of 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 sulfur dioxide (SO_2) on June 2, 2010 (40 CFR 50.17) and fine particulate matter ($PM_{2.5}$) on January 15, 2013 (78 FR 3086). 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 31, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2013–0558 at *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: Kate Gregory, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6175, *gregory.kate@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);

• Follow directions and organize your comments;

• Explain why you agree or disagree;

• Suggest alternatives and substitute language for your requested changes;

• Describe any assumptions and provide any technical information and/or data that you used;

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;

• Provide specific examples to illustrate your concerns, and suggest alternatives;

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,

• Make sure to submit your comments by the comment period deadline identified.

II. Background

On June 2, 2010, the EPA promulgated a new NAAQS for SO_2, establishing a new one-hour SO_2 standard at a level of 75 parts per billion (ppb) based on the three-year average of the 99th percentile of 1-hour daily maximum concentrations. Additionally, the EPA revoked both the existing 24-hour and annual primary SO_2 standards (75 FR 35520, June 22, 2010). Subsequently, on January 15, 2013, the EPA promulgated a new NAAQS for $PM_{2.5}$, revising the annual $PM_{2.5}$ NAAQS by lowering the level to 12.0 micrograms per cubic meter ($\mu g/m^3$). Additionally, the EPA retained the 24-hour $PM_{2.5}$ standard at a level of 35 $\mu g/m^3$ and is revising the Air Quality Index (AQI) for $PM_{2.5}$ to be consistent with the revised primary $PM_{2.5}$ standards (78 FR 3086, January 15, 2013).

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance and enforcement of the NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for $PM_{2.5}$, ozone, Pb, NO_2, and SO_2 already meet those requirements. The EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2007 Memo). On September 25, 2009, the

EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2009 Memo), followed by the October 14, 2011, "Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)" (2011 Memo). Most recently, the EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" on September 13, 2013 (2013 Memo).

III. What is the scope of this rulemaking?

The EPA is acting upon the SIP submissions from North Dakota that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

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

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] The EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, the EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

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

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and the EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of the EPA's "Final NSR Improvement Rule," 67 FR 80186, Dec. 31, 2002, as amended by 72 FR 32526, June 13, 2007 ("NSR Reform").

As discussed below, CAA section 110(a)(2)(D)(i)(I) covers elements 1 and 2 of "interstate transport," while 110(a)(2)(D)(i)(II) covers interstate transport elements 3 and 4. The EPA is not addressing 110(a)(2)(D)(i)(I) elements 1 and 2 for either the 2010 SO_2 or 2012 $PM_{2.5}$ NAAQS as part of this action. These elements will be addressed in a separate action.

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

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

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

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

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and

[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.

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

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

The North Dakota Department of Health (the Department) submitted certifications of North Dakota's infrastructure SIP for the 2010 SO_2 NAAQS on March 7, 2013 and for the 2012 $PM_{2.5}$ NAAQS on August 23, 2015. Infrastructure SIPs were taken out for public notice and North Dakota provided an opportunity for public hearing, as indicated in each certification (available within this docket). North Dakota's infrastructure certifications demonstrate how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. These plans reference the North Dakota Century Code (NDCC) and the North Dakota Air Pollution Control Rules (NDAC). These submittals are available within the electronic docket for today's proposed action at *www.regulations.gov*. The NDCC and NDAC referenced in the submittals are publicly available at *http://www.legis.nd.gov/general-information/north-dakota-century-code* and *http://www.legis.nd.gov/cencode/t23c25.html*. Air pollution control regulations and statutes that have been previously approved by the 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 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, subject to the following clarifications.

First, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Furthermore, North Dakota has no areas designated as nonattainment for the 2010 SO_2 or 2012 $PM_{2.5}$ 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 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

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

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

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

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

The State's submissions cite regulatory documents included in Chapters 23–25–03, 23–25–03.2 and 23–25–03.10 of the NDCC. Provisions contained in 23–25–03 of the NDCC provide the legal authority and framework for the Department to require that permit applicants submit adequate monitoring data. Additionally, 23–25–03.10 of the NDCC enables the Department to impose reasonable conditions upon an approval to construct, modify, or operate, including ambient air quality monitoring. Additionally, the State of North Dakota submits data to the EPA's Air Quality System database in accordance with 40 CFR 58.16. Finally, North Dakota's 2016 Annual Monitoring Network Plan was approved through a letter dated December 5, 2016 (available within the docket). The State provides the EPA with prior notification when changes to its monitoring network or plan are being considered.

We find that North Dakota's SIP and practices are adequate for the ambient air quality monitoring and data system requirements 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 that [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 that are 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

[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." (September 20, 1999).

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 section 110(a)(2)(C).

Enforcement of Control Measures Requirement

NDCC 23–25–10 and NDAC 33–15–01–17 allow the State to enforce applicable laws, regulations, and standards; to seek injunctive relief; and to provide authority to prevent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with prevention of significant deterioration requirements.

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 demonstrating that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) prong 3 may also be satisfied by demonstrating the air agency has a complete PSD permitting program that applies to 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 the 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 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.

At present, the EPA has determined that North Dakota's SIP is sufficient to satisfy elements (C), (D)(i)(II) prong 3, 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 (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) prong 3, 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 the EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect the EPA's proposed approval of North Dakota's infrastructure SIP as to the requirements of elements (C), (D)(i)(II) prong 3, and (J). Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, the EPA promulgated the rule, "Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)" (73 FR 28321) (2008 Implementation Rule). 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. 2013), issued a judgment that remanded

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

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 particulate matter nonattainment areas.

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

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 $PM_{2.5}$.

Therefore, the EPA is proposing to approve North Dakota's infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in section 110(a)(2)(C) to include a PSD permitting program in the SIP that covers the requirements for all regulated NSR pollutants as required by part C of the Act.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program was originally approved by the EPA on August 21, 1995 (60 FR 43401). Since approval of the minor NSR program, the State and the EPA have relied on the program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

The EPA is proposing to approve North Dakota's infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the 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 prongs 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 contribute significantly to nonattainment in any other state with respect to any national primary or secondary NAAQS (prong 1), or interfere with maintenance by any other state with respect to the same NAAQS (prong 2). 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 to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). In this action, the EPA is only addressing prongs 3 and 4 of CAA section 110(a)(2)(D)(i). We will address prongs 1 and 2 for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS in a separate rulemaking.

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

With regard to the PSD portion of section 110(a)(2)(D)(i)(II) (prong 3), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rules.[4] As discussed in section VI.3 of this proposed action, North Dakota has such a PSD-permitting program.

As stated in the 2013 Guidance, 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 prong 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 North Dakota does not have any nonattainment areas, the EPA is proposing to approve the infrastructure

[4] *See* 2013 Guidance.

SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

B. Evaluation of Interference With Measures To Protect Visibility

The 2013 Guidance states that section 110(a)(2)(D)(i)(II)'s prong 4 requirements can be satisfied by approved SIP provisions that the EPA has found to adequately address a state's contribution to visibility impairment in other states. The EPA interprets prong 4 to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies. *See* 2013 Guidance at 33.

The 2013 Guidance lays out two ways in which a state's infrastructure SIP submittal may satisfy prong 4. One way is through a state's confirmation in its infrastructure SIP submittal that it has an EPA-approved regional haze SIP in place that fully meets the requirements of 40 CFR 51.308 or 309. Alternatively, in the absence of a fully approved regional haze SIP, a state can make a demonstration in its infrastructure SIP submittal that emissions within its jurisdiction do not interfere with other states' plans to protect visibility. Such a submittal should point to measures in the SIP that limit visibility-impairing pollutants and ensure that the resulting reductions conform to any mutually agreed emission reductions under the relevant regional haze regional planning organization (RPO) process.[5]

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 under 40 CFR 51.308 or 309 to protect Class I areas in other states. States working together through state-to-state consultations or a regional planning process are required to include in their regional haze SIPs all agreed upon measures or measures that will provide equivalent visibility improvement in the Class I areas of their neighbors. 40 CFR 51.308(f)(2)(ii)(A). Given these requirements in the regional haze program we have concluded that a fully approved regional haze SIP satisfies the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility.

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 regional haze. 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 2010 SO_2 and 2012 $PM_{2.5}$ infrastructure certifications, the State points to existing portions in the North Dakota SIP, specifically referencing the North Dakota Regional Haze SIP (NDAC 33–15–25), to certify that the State meets the visibility requirements of section 110(a)(2)(D)(i)(II). The State also references the PSD (NDAC 33–15–15) and Visibility Protection (NDAC 33–15–19) portions of its SIP, as well as the EPA's Regional Haze Federal implementation plan (FIP).[6] For the 2012 $PM_{2.5}$ certification, the State also points to its five-year Progress Report for Regional Haze, submitted to the EPA in January 2015, which (per the State) "indicates that the reasonable progress goals established in the SIP have been met (TRNP) or will likely be met (LWA)," and that "the emissions reductions at EGUs required by the SIP. . . will be achieved or exceeded."[7]

In this action, we are proposing to find that the emissions reductions approved into North Dakota's Regional Haze SIP are sufficient to ensure that emissions from sources within the State do not interfere with the reasonable progress goals of Class I areas in 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 Regional Haze SIP, and the SIP included the controls and associated emission reductions assumed in the modeling.

However, the EPA did not fully approve the North Dakota Regional Haze 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 the NO_X emission reductions from Coal Creek Station that were assumed in the WRAP's visibility modeling, which nearby states relied on in setting their reasonable progress goals.[8] This is relevant to the 2012 $PM_{2.5}$ NAAQS, as NO_X is a precursor for $PM_{2.5}$. We note, however, that the North Dakota Regional Haze SIP also adopted reasonable progress NO_X controls that were not included in the WRAP's modeling for Otter Tail Power Company's Coyote Station,[9] as these controls were added as an amendment to the SIP over a year after the original SIP was submitted. *See* 77 FR 20944 (April 6, 2012). The EPA approved these controls into the North Dakota Regional Haze SIP as part of our April 6, 2012 final action. This 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 3,214 tons per year. *See* 76 FR 58603 and 58628 (September 21, 2011). As the Coal Creek and Coyote stations are roughly 32 miles apart, and the Coyote Station is about 15–20 miles closer than Coal Creek to the nearest out of state Class I areas, the visibility impacts from NO_X emission reductions at Coyote on out-of-state Class I areas would be similar and potentially greater than those from Coal Creek.[10] The State can rely on the Coyote reasonable progress reductions to demonstrate that emissions within the jurisdiction conform to the mutually-agreed regional haze reductions and associated reasonable progress goals because they are approved into the SIP.

Because the reductions in North Dakota's approved Regional Haze SIP are greater than those assumed by the WRAP modeling, and it is reasonable to

[5] *See* 2013 Guidance at 34, and also 76 FR 22036 (April 20, 2011) containing 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.

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

[7] The EPA notes that Theodore Roosevelt National Park (TRNP) and Lostwood Wilderness Area (LWA) are both located within North Dakota, and are therefore would not be included in a prong 4 transport analysis. To date, the EPA has not taken any action on North Dakota's January 2015 Progress Report.

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

[9] *http://www.wrapair.org/forums/ssjf/pivot.html.*

[10] Medicine Lake Wilderness, in Montana, is roughly 144 miles from Coyote and roughly 164 miles from Coal Creek. The Badlands/Sage Creek Wilderness in South Dakota is roughly 230 miles from Coyote and roughly 245 miles from Coal Creek.

find that the emission reductions provide the agreed upon visibility improvements in affected Class I areas, the 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 for the 2012 $PM_{2.5}$ NAAQS.

With regard to the 2010 SO_2 NAAQS, it is appropriate for the State to rely on the Regional Haze SIP approval for the purposes of prong 4, as the EPA approved all of the State's SO_2 BART and reasonable progress determinations. The EPA is therefore 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 for the 2010 SO_2 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.

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 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

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

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

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 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The State receives section 103 and 105 grant funds through its Performance Partnership Grant from the EPA along with required state matching funds to provide funding necessary to carry out 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. 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 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

b. Sub-Element (ii): State Boards

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

On July 30, 2013 (78 FR 45866) the 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 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."

Furthermore, 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 January 10 2017. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *https://www.epa.gov/air-emissions-inventories.*

Based on the analysis above, we propose to approve the North Dakota SIP as meeting the requirements of CAA

[11] *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.

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] 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 the 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 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 $PM_{2.5}$.

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).

[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 $PM_{2.5}$, 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* Email from Tom Bachman "Request for Clarifications_ND iSIP 2008 ozone, 2008 Pb, and 2010 NO_2 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.

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 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]."

Chapters 23–25–03.8 and 23–25–03.12 of the NDCC and section 1.14 of the North Dakota SIP, give the Department sufficient authority to meet the requirements of CAA section 110(a)(2)(H). 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 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, the 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. The 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, 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 North Dakota SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

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

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(l)(2) requiring that modification or substitution of a model specified in Appendix W must be approved by the Administrator (see NDAC 33–15–14–02.4 and NDAC 33–15–15–01.2). 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 the 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 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."

NDAC 33–15–23 and NDCC 23–25–04.2, require applicants of construction permits to pay the costs for the Department to review and act on the permit applications. We also note that fees collected under North Dakota's approved title V permit program (64 FR 32433, Aug. 16, 1999) are sufficient to implement and enforce the program. Therefore, we propose to approve the submissions as submitted 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 nonregulatory provision in Chapter 10 of North Dakota's SIP, Intergovernmental Cooperation, meets the requirements of CAA section 110(a)(2)(M). We propose to approve North Dakota's SIP as meeting these requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

VII. What action is the EPA taking?

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

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

Proposed for approval
March 7, 2013 submittal—2010 SO_2 NAAQS: (A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
August 23, 2015 submittal—2012 $PM_{2.5}$ NAAQS: (A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).

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

Proposed for no action (Revision to be made in separate rulemaking action)
March 7, 2013 submittal—2010 SO_2 NAAQS: (D)(i)(I) prongs 1 and 2.
August 23, 2015 submittal—2012 $PM_{2.5}$ NAAQS: (D)(i)(I) prongs 1 and 2.

VIII. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting Federal requirements; 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: June 14, 2017.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2017–13667 Filed 6–28–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0504; FRL–9964–08–Region 4]

Air Plan Approval; GA and SC: Changes to Ambient Air Standards and Definitions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of revisions to the Georgia State Implementation Plan (SIP) submitted by the Georgia Department of Natural Resources, Environmental Protection Division, on August 30, 2010, and on July 25, 2014; and portions of revisions to the South Carolina SIP, submitted by the Department of Health and Environmental Control on December 15, 2014, August 12, 2015, and November 4, 2016. The Georgia SIP revisions incorporate definitions relating to fine particulate matter ($PM_{2.5}$), and amend state rules to reflect the 2008 national ambient air quality standard (NAAQS) for lead. The South Carolina SIP revisions incorporates the 2010 sulfur dioxide NAAQS, 2010 nitrogen dioxide NAAQS, 2012 $PM_{2.5}$ NAAQS, 2015 8-hour ozone NAAQS, removes the 1997 8-hour ozone NAAQS, and removes the standard for gaseous fluorides from the SIP. This action is being proposed because Georgia and South Carolina have demonstrated that these changes are consistent with the Clean Air Act.

DATES: Written comments must be received on or before July 31, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0504 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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. 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: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Akers can be reached via telephone at (404)