

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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, 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, Nitrogen dioxide, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

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

Dated: November 3, 2014.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2014-0258; FRL-9919-50-Region 9]

#### Approval and Promulgation of State Implementation Plans; Arizona; Infrastructure Requirements for the 2008 Lead (Pb) and the 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Arizona to address the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 Lead (Pb) and 2008 ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each State adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. We refer to such SIP revisions as "infrastructure" SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS including, but not limited to, legal authority, regulatory structure, resources, permit programs, monitoring, and modeling necessary to assure attainment and maintenance of the standards. In addition, we are proposing to approve several state provisions addressing CAA conflict of interest and monitoring requirements into the Arizona SIP. We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Written comments must be received on or before December 24, 2014.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R09-OAR-2014-0258, by one of the following methods:

1. *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *Email:* Jeffrey Buss at [buss.jeffrey@epa.gov](mailto:buss.jeffrey@epa.gov).

3. *Fax:* Jeffrey Buss, Air Planning Office (AIR-2), at fax number 415-947-3579.

4. *Mail:* Jeffrey Buss, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105.

5. *Hand or Courier Delivery:* Jeffrey Buss, Air Planning Section (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105. Such deliveries are only accepted during the Regional Office's normal hours of operation. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R09-OAR-2014-0258. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through [www.regulations.gov](http://www.regulations.gov) or email that you consider to be CBI or otherwise protected from disclosure. The [www.regulations.gov](http://www.regulations.gov) Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as publicly

available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Buss, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (415) 947-4152, email: [buss.jeffrey@epa.gov](mailto:buss.jeffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to EPA.

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### I. EPA’s Approach to the Review of Infrastructure SIP Submittals

EPA is acting upon several SIP submittals from Arizona that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone and 2008 Pb NAAQS. The requirement for states to make a SIP submittal of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submittals “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 submittals are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submittals, and the requirement to make the submittals is not conditioned upon EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submittal must address.

EPA has historically referred to these SIP submittals made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submittals. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submittal from submittals that are intended to satisfy other SIP requirements under the CAA, such as

“nonattainment SIP” or “attainment SIP” submittals to address the nonattainment planning requirements of part D of title I of the CAA, “regional haze SIP” submittals required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NSR) permit program submittals to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submittals, and section 110(a)(2) provides more details concerning the required contents of these submittals. 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.<sup>1</sup> 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 submittals provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submittal.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submittals for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that “each” SIP submittal must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.<sup>2</sup> Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses

<sup>1</sup> 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.

<sup>2</sup> See, e.g., “Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call; Final Rule,” 70 FR 25162, at 25163–25165, May 12, 2005 (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

when attainment plan SIP submittals to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submittal of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.<sup>3</sup> This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submittal.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submittal, and whether EPA must act upon such SIP submittal in a single action. Although section 110(a)(1) directs states to submit “a plan” to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submittals separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submittals to meet the infrastructure SIP requirements, EPA can elect to act on such submittals either individually or in a larger combined action.<sup>4</sup> Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submittal for a given NAAQS without concurrent action on the entire submittal. For example, EPA has sometimes elected to act at different times on various elements and sub-

<sup>3</sup> EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submittal of certain types of SIP submittals in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submittal of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

<sup>4</sup> See, e.g., “Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,” 78 FR 4339, January 22, 2013 (EPA’s final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA’s 2008 PM<sub>2.5</sub> NSR rule), and “Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 PM<sub>2.5</sub> NAAQS,” 78 FR 4337, January 22, 2013 (EPA’s final action on the infrastructure SIP for the 2006 PM<sub>2.5</sub> NAAQS).

elements of the same infrastructure SIP submittal.<sup>5</sup>

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submittal requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submittals for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submittal for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submittal to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.<sup>6</sup>

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

<sup>5</sup> On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

<sup>6</sup> For example, implementation of the 1997 PM<sub>2.5</sub> NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

As this example illustrates, each type of SIP submittal may implicate some elements of section 110(a)(2) but not others.

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

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submittals for particular elements.<sup>7</sup> EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Infrastructure SIP Guidance).<sup>8</sup> EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submittals to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submittals.<sup>9</sup> The guidance also

<sup>7</sup> EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submittals. The CAA directly applies to states and requires the submittal of infrastructure SIP submittals, regardless of whether or not EPA provides guidance or regulations pertaining to such submittals. EPA elects to issue such guidance in order to assist states, as appropriate.

<sup>8</sup> "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

<sup>9</sup> EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submittals to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d7

discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submittals need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submittal for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submittals. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submittals to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Infrastructure SIP Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (e.g., whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submittals because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submittals with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C, title I of the Act and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and regulated NSR pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40

(D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

Code of Federal Regulations (CFR) 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 PM<sub>2.5</sub> NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

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

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submittal is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186, December 31, 2002, as amended by 72 FR 32526, June 13, 2007 ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submittal without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submittal even if it is aware of such existing provisions.<sup>10</sup> It is important to

<sup>10</sup> By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submittal that contained a legal deficiency, such as a new exemption for excess emissions during SSM

note that EPA's approval of a state's infrastructure SIP submittal should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

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

For example, EPA's 2013 Infrastructure SIP Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submittal for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately

events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.<sup>11</sup> Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submittals.<sup>12</sup> Significantly, EPA's determination that an action on a state's infrastructure SIP submittal is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submittal, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.<sup>13</sup>

## II. Background

### A. Statutory Framework

As discussed in section I of this proposed rule, CAA section 110(a)(1) requires each state to submit to EPA, within three years after the promulgation of a primary or secondary NAAQS or any revision thereof, an infrastructure SIP revision that provides

<sup>11</sup> For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 76 FR 21639, April 18, 2011.

<sup>12</sup> EPA has used this authority to correct errors in past actions on SIP submittals related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536, December 30, 2010. EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664, July 25, 1996 and 62 FR 34641, June 27, 1997 (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051, November 3, 2009 (corrections to Arizona and Nevada SIPs).

<sup>13</sup> See, e.g., EPA's disapproval of a SIP submittal from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344, July 21, 2010 (proposed disapproval of director's discretion provisions); 76 FR 4540, January 26, 2011 (final disapproval of such provisions).

for the implementation, maintenance, and enforcement of such NAAQS. Section 110(a)(2) sets the content requirements of such a plan, which generally relate to the information and authorities, compliance assurances, procedural requirements, and control measures that constitute the “infrastructure” of a state’s air quality management program. These infrastructure SIP elements required by section 110(a)(2) are as follows:

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

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment NSR), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

### B. Regulatory History

#### 2008 Pb NAAQS

On November 12, 2008, the U.S. Environmental Protection Agency (EPA) issued a revised NAAQS for Pb.<sup>14</sup> This

<sup>14</sup> 73 FR 66964 (November 12, 2008). The 1978 Pb standard (1.5 µg/m<sup>3</sup> as a quarterly average) was modified to a rolling 3 month average not to be

action triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the revised NAAQS. On October 14, 2011, EPA issued “Guidance on Section 110 Infrastructure SIPs for the 2008 Pb NAAQS”, referred to herein as EPA’s 2011 Pb Guidance.<sup>15</sup> Depending on the timing of a given submittal, some states relied on the earlier draft version of this guidance, referred to herein as EPA’s 2011 Draft Pb Guidance.<sup>16</sup> EPA issued additional guidance on infrastructure SIPs on September 13, 2013.<sup>17</sup>

#### 2008 Ozone NAAQS

On March 27, 2008, EPA issued a revised NAAQS for 8-hour Ozone.<sup>18</sup> This action triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the revised NAAQS. EPA did not, however, prepare guidance at this time for states in submitting I-SIP revisions for the 2008 Ozone NAAQS.<sup>19</sup> On September 13, 2013, EPA issued “Guidance of Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” which provides advice on the development of infrastructure SIPs for the 2008 ozone NAAQS (among other pollutants) as well as infrastructure SIPs for new or revised NAAQS promulgated in the future.<sup>20</sup>

### III. The State’s Submittals

The Arizona Department of Environmental Quality (ADEQ) has

exceeded of 0.15 µg/m<sup>3</sup>. EPA also revised the secondary NAAQS to 0.15 µg/m<sup>3</sup> and made it identical to the revised primary standard. Id.

<sup>15</sup> See Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1–10 (October 14, 2011).

<sup>16</sup> “DRAFT Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS),” June 17, 2011 version.

<sup>17</sup> See Memorandum dated September 13, 2013 from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to Regional Air Directors, EPA Regions 1–10, “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” (referred to herein as “2013 Infrastructure SIP Guidance”).

<sup>18</sup> 73 FR 16436 (March 27, 2008).

<sup>19</sup> Preparation of guidance for the 2008 Ozone NAAQS was postponed given EPA’s reconsideration of the standard. See 78 FR 34183 (June 6, 2013).

<sup>20</sup> See Memorandum dated September 13, 2013 from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to Regional Air Directors, EPA Regions 1–10, “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” (referred to herein as “2013 Infrastructure SIP Guidance”).

submitted several infrastructure SIP revisions pursuant to EPA’s promulgation of the NAAQS addressed by this proposed rule, including the following:

- October 14, 2011—“Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(2) and (2); 2008 Lead NAAQS,” to address all of the CAA section 110(a)(2) requirements, except for section 110(a)(2)(G)<sup>21</sup> for the 2008 Pb NAAQS (2011 Pb I-SIP Submittal).

- December 27, 2012—“Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(2) and (2); 2008 8-hour Ozone NAAQS,” to address all of the CAA section 110(a)(2) requirements for the 2008 8-hour Ozone NAAQS (2012 Ozone I-SIP Submittal).

- December 6, 2013—“Submittal of Maricopa County Rule 100 revising the Maricopa County Portion of the Arizona State Implementation Plan for Section 110(a)(2) Infrastructure” from Eric Massey, Director of ADEQ (2013 Maricopa County Submittal). Maricopa County Rule 100 was submitted to address a deficiency in section 110(a)(2)(E)(ii) of the SIP for Maricopa County concerning conflict of interest requirements for hearing boards.

- December 19, 2013—“Submittal of Pima County Rules revising the Pima County Portion of the Arizona State Implementation Plan for Section 110(a)(2) Infrastructure” from Eric Massey, Director of ADEQ (2013 Pima County Submittal). This submittal included Pima County Rule 17.04.190 “Composition,” adopted September 28, 1993; Pima County Rule 17.12.040 “Reporting for Compliance Evaluations,” adopted September 28, 1993; and Pima County Rule 17.24.040 “Reporting Requirements,” adopted April 19, 2005 for inclusion into the Arizona SIP. These rules were submitted to address deficiencies in section 110(a)(2)(E)(ii) of the SIP concerning conflict of interest requirements for hearing boards and section 110(a)(2)(F) of the SIP concerning stationary source monitoring and reporting.

- September 4, 2014—“Submittal of Pinal County Rule 1–3–140 Revising the Pinal County Portion of the Arizona State Implementation Plan for Section 110(a)(2) Infrastructure” from Eric Massey, Director of ADEQ (2014 Pinal

<sup>21</sup> In a separate rulemaking, EPA fully approved Arizona’s SIP to address the requirements regarding air pollution emergency episodes in CAA section 110(a)(2)(G) for the 1997 8-hour ozone NAAQS. 77 FR 62452 (October 15, 2012). Although ADEQ did not submit an analysis of Section 110(a)(2)(G) requirements, we discuss them in our TSD, which is in the docket for this rulemaking.

County Submittal). This submittal included Pinal County Rule 1–3–140 “Definitions,” adopted July 23, 2014 for inclusion into the Arizona SIP. Pinal County Rule 1–3–140 was submitted to address a deficiency in section 110(a)(2)(E)(ii) of the SIP for Pinal County concerning conflict of interest requirements for hearing boards.

We find that these submittals meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102.

In addition to the above infrastructure submittals, on October 29, 2012, ADEQ submitted “New Source Review State Implementation Plan Submission” as well as “Supplemental Information to 2012 New Source Review State Implementation Plan Submission” on July 2, 2014. In addition to addressing revisions to Arizona’s New Source Review (NSR) program, these submissions also relate to I–SIP elements in CAA sections 110(a)(2)(C), (D), (J) and (K), which EPA is not acting on in today’s rulemaking. The I–SIP elements in CAA sections 110(a)(2)(C), (D), (J) and (K) will be addressed in a future rulemaking.

#### IV. EPA’s Evaluation and Proposed Action

EPA has evaluated the 2011 Pb I–SIP Submittal, the 2012 Ozone I–SIP Submittal, the 2013 Maricopa County Submittal, the 2013 Pima County Submittal, and the 2014 Pinal County Submittal, as well as the existing provisions of the Arizona SIP for compliance with the CAA section 110(a) requirements for the 2008 Pb and 2008 ozone NAAQS. Our Technical Support Document (TSD) contains more detailed evaluations and is available in the public docket for this rulemaking, which may be accessed online at <http://www.regulations.gov>, docket number EPA–R09–OAR–2014–0258.

Based upon this analysis, EPA proposes to approve the 2011 Pb I–SIP Submittal, the 2012 Ozone I–SIP Submittal, the 2013 Maricopa County Submittal, the 2013 Pima County Submittal and the 2013 Pinal County Submittal with respect to the following infrastructure SIP requirements:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.

- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(K): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

In addition, we are proposing to approve into the SIP certain regulatory provisions included in the 2013 Pima County and Maricopa County Submittals, and in the 2014 Pinal County Submittal, as discussed in the TSD.<sup>22</sup>

On November 5, 2012, EPA approved in part and disapproved in part State Implementation Plan (SIP) revisions submitted by the state of Arizona pursuant to the requirements of the Clean Air Act (CAA) for the 1997 8-hour ozone NAAQS and the 1997 and 2006 NAAQS for fine particulate matter (PM<sub>2.5</sub>).<sup>23</sup> In today’s action, we propose to approve certain portions of the previously disapproved infrastructure SIP action. Specifically, today’s proposed action will correct the previous deficiencies with respect to CAA section 110(a)(2)(E)(ii) for Maricopa, Pima, and Pinal Counties and section 110(a)(2)(F) for Pima County. If finalized before the end of the two-year FIP deadline established by our 2012 action on Arizona’s I–SIP for the 1997 8-hour ozone NAAQS and 1997 and 2006 PM<sub>2.5</sub> NAAQS, approval of these infrastructure SIP elements would relieve EPA of the obligation to promulgate a FIP, as required under CAA Section 110(c)(1).

We are not proposing to act today on those elements of the infrastructure SIP that address the requirements of sections 110(a)(2)(C), (D), (J) and (K) of the Act. On October 29, 2012, ADEQ submitted “New Source Review State Implementation Plan Submission” and on July 2, 2014 submitted “Supplemental Information to 2012 New Source Review State Implementation Plan Submission”. These submissions address the permitting portions of I–SIP elements in CAA sections 110(a)(2)(C), (D), (J) and (K) and will be addressed in a subsequent rulemaking.

Section 110(l) of the Act prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any

<sup>22</sup> Copies of these Arizona county regulations are included in the 2013 Pima County and Maricopa County Submittals, and 2014 Pinal County Submittal, which are available in the docket for this action and online at <http://www.regulations.gov>, docket number EPA–R09–OAR–2014–0258.

<sup>23</sup> 77 FR 66398 (November 5, 2012).

other applicable requirement of the Act. All of the elements of the infrastructure SIP that we are proposing to approve, as explained in the TSD, would improve the SIP by replacing obsolete statutes or regulations and by updating the state and local agencies’ SIP implementation and enforcement authorities. We propose to determine that our approval of the elements discussed above would comply with CAA section 110(l) because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for RFP and attainment of the NAAQS are met, and the SIP revision clarifies and updates the SIP. Our TSD contains a more detailed discussion of our evaluation.

#### V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and 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, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

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

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

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

Dated: September 30, 2014.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2014-27752 Filed 11-21-14; 8:45 am]

**BILLING CODE 6560-50-P**

## OFFICE OF PERSONNEL MANAGEMENT

### 45 CFR Part 800

RIN 3206-AN12

#### Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing a proposed rule to implement modifications to the Multi-State Plan (MSP) Program based on the experience of the Program to date. OPM established the MSP Program pursuant to section 1334 of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, referred to collectively as the Affordable Care Act. This proposed rule clarifies the approach used to enforce the applicable requirements of the Affordable Care Act with respect to health insurance issuers that contract with OPM to offer MSP options. This proposed rule amends

MSP standards related to coverage area, benefits, and certain contracting provisions under section 1334 of the Affordable Care Act. This document also makes non-substantive technical changes.

**DATES:** Comments are due on or before December 24, 2014.

**ADDRESSES:** You may submit comments, identified by Regulation Identifier Number (RIN) 3206-AN12 using any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail, Hand Delivery or Courier:* National Healthcare Operations, Healthcare and Insurance, U.S. Office of Personnel Management, 1900 E Street NW., Room 3468, Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Cameron Stokes by telephone at (202) 606-2128, by FAX at (202) 606-4430, or by email at [mspp@opm.gov](mailto:mspp@opm.gov).

**SUPPLEMENTARY INFORMATION:** The Patient Protection and Affordable Care Act (Pub. L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), together known as the Affordable Care Act, provides for the establishment of Affordable Insurance Exchanges, or “Exchanges” (also called Health Insurance Marketplaces, or “Marketplaces”), where individuals and small businesses can purchase qualified coverage. The Exchanges provide competitive marketplaces for individuals and small employers to compare available private health insurance options based on price, quality, and other factors. The Exchanges enhance competition in the health insurance market, improve choice of affordable health insurance, and give individuals and small businesses purchasing power comparable to that of large businesses. The Multi-State Plan (MSP) Program was created pursuant to section 1334 of the Affordable Care Act to increase competition by offering high-quality health insurance coverage sold in multiple States on the Exchanges. The U.S. Office of Personnel Management (OPM) is proposing this regulation to modify the standards set forth for the MSP Program under 45 CFR part 800 that was published as final rule on March 11, 2013 (78 FR 15560). This proposed rule will clarify OPM’s intent in administering the Program as well as make regulatory changes in order to expand issuer participation and offerings in the Program to meet the goal of increasing competition.

## Abbreviations

EHB Essential Health Benefits  
 FEHBA Federal Employees Health Benefits Act  
 FEHB Program Federal Employees Health Benefits Program  
 HHS U.S. Department of Health and Human Services  
 MSP Multi-State Plan  
 NAIC National Association of Insurance Commissioners  
 OPM U.S. Office of Personnel Management  
 PHS Act Public Health Service Act  
 QHP Qualified Health Plan  
 SHOP Small Business Health Options Program

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### I. Background

Section 1334 of the Affordable Care Act created the Multi-State Plan (MSP) Program to foster competition in the individual and small group health insurance markets on the Exchanges (also called Health Insurance Exchanges or Marketplaces) based on price, quality, and benefit delivery. The Affordable Care Act directs the U.S. Office of Personnel Management (OPM) to contract with private health insurance issuers to offer at least two MSP options on each of the Exchanges in the States and the District of Columbia.<sup>1 2</sup> The law

<sup>1</sup> Multi-State Plan option or MSP option means a discrete pairing of a package of benefits with particular cost sharing (which does not include premium rates or premium rate quotes) that is offered under a contract with OPM.

<sup>2</sup> Note that the U.S. Department of Health & Human Services (HHS) determined that State-specific requirements in the ACA do not apply to U.S. territories, and thus territories are not required to establish Exchanges. See Letter to Commissioner Gregory R. Francis, Division of Banking & Insurance, St. Croix, Virgin Islands, from Marilyn Tavenner, Administrator, Centers for Medicare and Medicaid Services, July 16, 2014.