

■ 2. Add 165.T09–0573 to read as follows:

**§ 165.T09–0573 Safety zone; Kathleen Whelan Wedding Fireworks, Lake St. Clair, Grosse Pointe Farms, MI.**

(a) *Location.* The safety zone will encompass all U. S. navigable waters on Lake St. Clair within a 600 foot radius of position 42°23'5" N, 082°53'37" W, location off shore of Grosse Pointe Farms, MI. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and Enforcement Period.* This rule is effective and will be enforced from 9:30 p.m. through 10 p.m. on July 23, 2011.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: July 12, 2011.

**J.E. Ogden,**

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 2011–18595 Filed 7–21–11; 8:45 am]

**BILLING CODE 9110–04–P**

## POSTAL SERVICE

### 39 CFR Part 241

#### Post Office Organization and Administration: Establishment, Classification, and Discontinuance; Correction

**AGENCY:** Postal Service.

**ACTION:** Final rule; correction.

**SUMMARY:** On July 14, 2011, the Postal Service published an amendment to the rules concerning the establishment, classification, and discontinuance of post offices. That rule contained certain incorrect internal cross-references, which are corrected by this further rulemaking.

**DATES:** *Effective Date:* July 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jim Boldt, (202) 268–6799.

**SUPPLEMENTARY INFORMATION:** The Postal Service published a final rule in the **Federal Register** on July 14, 2011 (76 FR 41413), amending the retail facility discontinuance regulations in 39 CFR part 241. In sections I.H (*Notice to Customers Served by Suspended Facility*) (76 FR 41416), I.K (*Emergency Suspensions*) (76 FR 41417), and I.O (*Procedural Recommendations*) (76 FR 41418) of the **SUPPLEMENTARY INFORMATION** in the preamble, the Postal Service erroneously cited 39 CFR 241.3(a)(4)(iii), which should have referred, in sections I.H and I.K, to subparagraph 241.3(a)(5)(iv) and, in section I.O, to subparagraph 241.3(a)(5)(iii).

In addition, subparagraph 241.3(a)(5)(iv) of the regulations contained in the final rule (76 FR 41421–22) contained erroneous cross-references to clause 241.3(a)(4)(i)(B) and subparagraph 241.3(a)(4)(iii), which should have referred to the respective provisions of paragraph 241.3(a)(5) instead. This final rule corrects the errors in 39 CFR 241.3(a)(5)(iv).

The Postal Service hereby adopts the following changes to 39 CFR part 241.

#### List of Subjects in 39 CFR Part 241

Organization and functions (government agencies), Postal Service.

Accordingly, 39 CFR part 241 is amended as follows:

#### PART 241—RETAIL ORGANIZATION AND ADMINISTRATION: ESTABLISHMENT, CLASSIFICATION, AND DISCONTINUANCE

■ 1. The authority citation for 39 CFR part 241 continues to read as follows:

**Authority:** 39 U.S.C. 101, 401, 403, 404, 410, 1001.

#### § 241.3 [Corrected]

■ 2. In 39 CFR 241.3:

■ a. In the first sentence of paragraph (a)(5)(iv), remove "241.3(a)(4)(i)(B)" and add "241.3(a)(5)(i)(B)" in its place.

■ b. In the third sentence of paragraph (a)(5)(iv), remove "241.3(a)(4)(iii)" and add "241.3(a)(5)(iii)" in its place.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 2011–18481 Filed 7–21–11; 8:45 am]

**BILLING CODE 7710–12–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R08–OAR–2010–0302; FRL–9442–2]

#### Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Utah

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving and conditionally approving the State Implementation Plan (SIP) submission from the State of Utah to demonstrate that the SIP meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the "infrastructure elements" of section 110(a)(2). The State of Utah submitted two certifications, dated December 3, 2007, and December 21, 2009, that its SIP met these requirements for the 1997 ozone NAAQS. The December 3, 2007 certification was determined to be complete on March 27, 2008 (73 FR 16205).

**DATES:** *Effective Date:* This final rule is effective August 22, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2010–0302. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard

copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, 303-312-6142, [dolan.kathy@epa.gov](mailto:dolan.kathy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

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**I. Background**

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several “infrastructure elements,” listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time a state develops and submits its SIP for a new or revised NAAQS affects the content of the submission. The contents

of such SIP submissions may also vary depending upon what provisions a state’s existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.<sup>1</sup>

On March 27, 2008, EPA published a final rule entitled, “Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS” (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or had failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that Utah had submitted a complete SIP (“Infrastructure SIP”) to meet these requirements.

On May 23, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of Utah (76 FR 29688) to act on the State’s Infrastructure SIP for the 1997 ozone NAAQS. Specifically, in the NPR EPA proposed approval of Utah’s SIP as meeting the requirements of all section 110(a)(2) elements with respect to the 1997 ozone NAAQS, aside from elements 110(a)(2)(D)(i), 110(a)(2)(I), and the visibility protection requirement of element 110(a)(2)(J), on which EPA did not propose action.<sup>2</sup>

In the May 23, 2011 NPR, EPA proposed to conditionally approve element 110(a)(2)(B) for the 1997 ozone NAAQS. EPA had discovered certain deficiencies in Utah’s monitoring network plan and Utah formally committed to submitting an adequate annual monitoring plan not later than one year after the date of this final action to correct those deficiencies.<sup>3</sup> In the NPR, EPA also stated that if Utah does not implement the measures specified in its commitment within one year after the date of this final action, EPA’s conditional approval will automatically revert to disapproval of

the infrastructure SIP for section 110(a)(2)(B) for the 1997 ozone NAAQS.

EPA proposed to approve element 110(a)(2)(C) for the 1997 ozone NAAQS in the event that the State clarified (or modified) its December 3, 2007 and December 21, 2009 certifications to ensure consistency with two rules related to regulation of greenhouse gas (GHG) emissions: “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (“Tailoring Rule”), 75 FR 31514 (June 3, 2010), and “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans” (“PSD SIP Narrowing Rule”), 75 FR 82536 (Dec. 30, 2010). In the PSD SIP Narrowing Rule, EPA withdrew its previous approval of Utah’s prevention of significant deterioration (PSD) program to the extent that it applied PSD permitting to GHG emissions increases from GHG-emitting sources below thresholds set in the Tailoring Rule. EPA withdrew its approval on the basis that the State lacked sufficient resources to issue PSD permits to such sources at the statutory thresholds in effect in the previously-approved PSD program. After the PSD SIP Narrowing Rule, the portion of Utah’s PSD SIP from which EPA withdrew its approval had the status of having been submitted to EPA but not yet acted upon. In its December 3, 2007 and December 21, 2009 certifications, Utah relied on its PSD program as approved at that date—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy the requirements of infrastructure element 110(a)(2)(C). Given EPA’s basis for the PSD SIP Narrowing Rule, EPA proposed approval of the Utah Infrastructure SIP for infrastructure element (C) if either the State clarified (or modified) its certification to make clear that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010, and for which the State has sufficient resources to implement, or the State acted to withdraw from EPA consideration the remaining portion of its PSD program submission that would have applied PSD permitting to GHG sources below the Tailoring Rule thresholds. On June 22, 2011, EPA received a letter from Utah clarifying that the State relies only on the portion of the PSD program that remains approved after the PSD SIP

<sup>1</sup> Memorandum from William T. Harnett, Director, Air Quality Policy Division, “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” (Oct. 2, 2007).

<sup>2</sup> See the NPR (76 FR 29688) for further explanation regarding the omission of elements 110(a)(2)(D)(i) and 110(a)(2)(I) from the proposal.

<sup>3</sup> The specific measures Utah will take are detailed in the commitment letter, which may be found in the docket for this action.

Narrowing Rule issued on December 30, 2010.<sup>4</sup>

EPA's proposed approval of elements 110(a)(2)(C) and (J) for the 1997 ozone NAAQS was also contingent on the final approval of the State's August 7, 2008 submittal. The State's PSD program, as submitted, for the most part incorporates by reference the Federal program at 40 CFR 52.21. The August 7, 2008 submittal updates the date of incorporation by reference of the State's PSD program to July 7, 2007, therefore incorporating EPA's phase 2 implementation rule for the 1997 ozone NAAQS (Phase 2 Rule), which includes requirements for PSD programs to treat nitrogen oxides (NO<sub>x</sub>) as a precursor for ozone (72 FR 71612, November 29, 2005). EPA proposed approval of the August 7, 2008 submittal on January 7, 2009 (74 FR 667), and finalized approval on June 29, 2011. EPA therefore approves in full elements 110(a)(2)(C) and (J) with this action.

#### *Scope of Infrastructure SIPs*

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM<sub>2.5</sub> NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.<sup>5</sup> The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); and (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"). EPA notes that there are two other substantive issues for which EPA

likewise stated that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source new source review (NSR)"); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80,186 (December 31, 2002), as amended by 72 FR 32,526 (June 13, 2007) ("NSR Reform"). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that "in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities." EPA further explained, for informational purposes, that "EPA plans to address such State regulations in the future." EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and PM<sub>2.5</sub> NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure

SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission "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 that these SIPs are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as "infrastructure SIPs." This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as "nonattainment SIP" submissions required to address the nonattainment planning requirements of part D, "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details

<sup>4</sup> Utah's June 22, 2011 clarification letter is available in the docket for this action.

<sup>5</sup> See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA-R05-OAR-2007-1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, 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 provisions, and some of which pertain to requirements for both authority and substantive provisions.<sup>6</sup> Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.<sup>7</sup>

Notwithstanding that section 110(a)(2) states that “each” SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).<sup>8</sup> This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general “infrastructure SIP” for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter “interstate transport” provisions within section 110(a)(2) and worked with states to address each of the four prongs of

section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.<sup>9</sup> This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the SIP. Finally, 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 and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.<sup>10</sup>

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.*, the PSD requirement applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section

110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements “as applicable.” In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 PM<sub>2.5</sub> NAAQS.<sup>11</sup> Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the “infrastructure” elements for SIPs, which it further described as the “basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.”<sup>12</sup> As further identification of these basic structural SIP requirements, “attachment A” to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended “to constitute an interpretation of” the requirements, and was merely a “brief description of the required elements.”<sup>13</sup> EPA also stated its belief that with one exception, these requirements were “relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with

<sup>6</sup> For example, section 110(a)(2)(E) 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 substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

<sup>7</sup> For example, section 110(a)(2)(D)(i) requires EPA to be sure that each SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. 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 25,162 (May 12, 2005)(defining, among other things, the phrase “contribute significantly to nonattainment”).

<sup>8</sup> See, *e.g.*, *Id.*, 70 FR 25,162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

<sup>9</sup> EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS. See, “Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards,” from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

<sup>10</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.

<sup>11</sup> See, “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards,” from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the “2007 Guidance”). EPA issued comparable guidance for the 2006 PM<sub>2.5</sub> NAAQS entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS),” from William T. Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the “2009 Guidance”).

<sup>12</sup> *Id.*, at page 2.

<sup>13</sup> *Id.*, at attachment A, page 1.

assistance from EPA Regions.”<sup>14</sup> For the one exception to that general assumption, however, *i.e.*, how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM<sub>2.5</sub> NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 PM<sub>2.5</sub> NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state’s submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director’s discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director’s discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA’s 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA’s proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is

<sup>14</sup> *Id.*, at page 4. In retrospect, the concerns raised by commenters with respect to EPA’s approach to some substantive issues indicates that the statute is not so “self explanatory,” and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP 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 that, 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 considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA’s 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 PM<sub>2.5</sub> NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate 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 SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.<sup>15</sup> Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.<sup>16</sup>

<sup>15</sup> EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, “Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,” 74 FR 21,639 (April 18, 2011).

<sup>16</sup> EPA has recently utilized this authority to correct errors in past actions on SIP submissions 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 82,536 (Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency

Significantly, EPA’s determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency’s subsequent reliance on provisions in section 110(a)(2) as part of the basis for action 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 the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.<sup>17</sup>

## II. Response to Comments

EPA received two comment letters on June 22, 2011, one from WildEarth Guardians (WEG) and the other from Western Resource Advocates (WRA), both environmental organizations. The WRA comment letter was written on behalf of both WRA and the organization Utah Physicians for a Healthy Environment (UPHE). The significant comments made by WRA and EPA’s responses to those comments are given below in Section (A). The significant comments made by WEG and EPA’s responses to those comments are given below in Section (B).

### Section A: WRA Comments and EPA Responses

*Comment No. 1:* The commenter stated that the State of Utah must strike from its regulations “any provisions allowing ‘director’s discretion’ to change unilaterally EPA-approved SIP-based emission limits, permitting variances and exempting excess startup, shutdown and malfunction emissions from compliance and enforcement provisions.” The commenter further stated that “definitive EPA action” on such provisions “cannot come too soon.”

*EPA Response:* EPA shares the commenter’s concerns that such provisions can have adverse impacts on air planning and enforcement, and as a result can have an adverse impact on

determined it had approved in error. See, *e.g.*, 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

<sup>17</sup> EPA has recently disapproved a SIP submission 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 42,342 at 42,344 (July 21, 2010) (proposed disapproval of director’s discretion provisions); 76 FR 4,540 (Jan. 26, 2011) (final disapproval of such provisions).

protection of public health. As discussed in greater depth in the Background section, EPA is not addressing startup, shutdown, and malfunction (SSM), variance, or director's discretion provisions in the context of this action on 110(a)(2) requirements for the 1997 ozone NAAQS. As stated in the NPR, EPA intends to address these issues separately at a later date.

However, with respect to the commenter's concerns about SSM provisions, EPA notes that the Agency has already issued a finding of substantial inadequacy and called for a SIP revision for Utah's "unavoidable breakdown" rule (76 FR 21639, Apr. 18, 2011). This action preceded, was independent of, and was not required for our action on section 110(a)(2)(A) for the 1997 ozone NAAQS. EPA considers this an important step towards addressing the issue noted by the commenter.

*Comment No. 2:* The commenter supported EPA efforts to address issues concerning the monitoring network for ozone in Utah. In particular, the commenter supported EPA's efforts to encourage the State to address the monitoring network in the Saint George area, specifically by completing its ozone saturation study in 2011, using that study to identify maximum concentration locations, and adjusting the monitoring network as required by the study. However, the commenter also urged EPA to require immediate action from the State to ensure adequate monitoring in the Saint George area, and, if necessary, immediately implement any controls necessary to bring the area into compliance with the ozone NAAQS.

*EPA Response:* EPA acknowledges the support for our conditional approval, based on Utah's commitment to make improvements with regard to monitoring as the commenter described. EPA notes that the State has committed to doing so within one year, and that with this data the State and EPA can then evaluate what additional actions may be necessary based upon better information concerning the ambient air quality in the area.

With respect to the 1997 ozone NAAQS, the data collected in southern Utah have not suggested a potential for ozone levels to violate that standard. From data collected in Zion National Park (2004–2010), Saint George (1995–1997), Santa Clara (2008–2010), and Mesquite, Nevada (33 miles southwest of Saint George and 13 miles from the Utah border), the highest design value recorded was 79 parts per billion (ppb) in Zion National Park in 2004–2006.

While the current Santa Clara monitor has not been shown to be sited to measure maximum concentration monitoring, there is no evidence to suggest a maximum concentration monitoring site elsewhere would record data in excess of the 1997 ozone NAAQS. Utah's commitment to ensuring that a monitor is placed at the maximum concentration site will allow the State and EPA to correctly assess air quality in the Saint George metropolitan statistical area (MSA).

*Comment No. 3:* The commenter supported EPA's efforts to regulate greenhouse gases.

*EPA Response:* EPA presumes that the commenter's support related to EPA's efforts to insure that the Utah infrastructure SIP adequately addresses PSD permitting requirements with respect to greenhouse gases as discussed in the NPR in accordance with the PSD SIP Narrowing Rule. As discussed in the background section above, in response to our proposal, Utah clarified that its infrastructure certification should not be read to rely on the portion of the PSD program for which the PSD SIP Narrowing Rule withdrew approval. Therefore, EPA has concluded that the current EPA approved Utah SIP is consistent with section 110(a)(2)(C) for purposes of greenhouse gases.

*Comment No. 4:* The commenter supported EPA's efforts to require ozone monitoring in Utah's Uinta Basin. However, the commenter urged EPA to use existing ozone monitoring data, which the commenter claimed "plainly show that air quality in the basin is not in compliance with the ozone standard," to designate the Uinta Basin as nonattainment for ozone.<sup>18</sup> The commenter also urged EPA to require Utah to install monitors in Vernal, Utah.

*EPA Response:* EPA shares the concerns of the commenters with respect to the monitoring network in Utah. However, in this action EPA is evaluating the adequacy of the infrastructure SIP of the State with respect to the 1997 8-hour ozone NAAQS. EPA has specific regulatory requirements at 40 CFR part 58 that provide requirements for the ambient air monitoring network required by section 110(a)(2)(B) of the Act for these NAAQS.

As discussed in the response to comment 3 in section B below, 40 CFR part 58 does not contain requirements for the State to monitor for ozone in the Uinta Basin. EPA therefore has no basis in this action to disapprove the

infrastructure SIP due to the absence of an ozone monitor in Vernal. Nonetheless, EPA notes that both Utah Department of Environmental Quality (DEQ) and the Ute Indian Tribe of the Uintah and Ouray Reservation began ozone monitoring in the Uinta Basin in 2011. These monitors should provide data that can be used to evaluate the appropriate designation for the Uinta Basin area, once there is sufficient data. Promulgation of area designations for a NAAQS is outside the scope of this action, the purpose of which is limited to review the Utah SIP for compliance with the infrastructure SIP requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS.

*Comment No. 5:* The commenter stated that "Utah's PSD program fails to comply" with the CAA, and therefore encouraged EPA to disapprove the State's submission with regards to its PSD program and the requirements of section 110(a)(2)(J). Specifically, the commenter asserted that the State's PSD program fails to comply with 40 CFR 70.4(b)(3)(x) with respect to the availability of state judicial review for persons who participated in the public process required under 40 CFR 70.7(h). In essence, the commenter cited rules and statutes governing Utah administrative appeal proceedings, including administrative appeal of PSD permits issued by the State, and argued (for several reasons) that these provide inadequate opportunity for members of the public to participate in administrative appeals. The commenter linked this to the availability of state judicial review of PSD permits by citing a statutory requirement in Utah's Administrative Procedure Act requiring parties seeking judicial review to exhaust all administrative remedies available.

*EPA Response:* In this action, EPA is evaluating the State's PSD permit program under sections 110(a)(2)(C) and (J), and, more generally, Utah's SIP under section 110(a)(2). The regulatory provision that the commenter cited, 40 CFR 70.4(b)(3), and the corresponding statutory provision in section 503(b)(6) of the CAA, apply only to Title V operating permit programs. In other words, section 503(b)(6) and 40 CFR 70.4(b)(3) do not apply to PSD permits. Furthermore, Utah's Title V program is not part of the Utah SIP. Therefore, any potential deficiency in Utah's Title V program with regards to availability of state judicial review is outside the scope of this action on the infrastructure SIP, and the comment gives us no basis to

<sup>18</sup> The comment does not precisely state which existing ozone monitoring data the commenter refers to. For a discussion of other monitoring data in the Uinta Basin, see the response to comment 1 in section B below.

change our proposed action on section 110(a)(2)(j).<sup>19</sup>

In addition, the comment expressed concerns primarily with a version of Utah Administrative Code (UAC) section R305-6-202 that the comment describes as effective July, 2011. The commenter did not provide a copy of the section showing that it had been adopted. A proposal to adopt the version of R305-6-202 for which the comment provides concerns was published in the Utah State Bulletin on March 15, 2011, with a potential effective date of July 1, 2011.<sup>20</sup> Subsequent issues of the Utah State Bulletin (through June 15, 2011) have not provided a notice of effective date for the proposal, a requirement under section 63G-301-3(12) of the Utah Administrative Procedures Act for a rule to become effective. Thus, the rule has only been proposed and not adopted, and any deficiencies there may be within it do not provide a basis for EPA to change its proposed approval of the current Utah infrastructure SIP for the 1997 ozone NAAQS for elements 110(a)(2)(C) and (J).

#### *Section B: WEG Comments and EPA Responses*

*Comment No. 1:* The commenter expressed concern that Utah's SIP fails "to attain and maintain the 1997 8-hour ozone NAAQS in the Uinta Basin." The commenter pointed to existing monitoring data from two monitors in the Uinta Basin over two years and part of a third to argue that the standard is currently being violated.<sup>21</sup> The commenter asserted that EPA cannot find that Utah's SIP meets section 110(a)(2)(1) and (2) requirements unless the EPA addresses the high ozone levels in the Uinta Basin and uses the

<sup>19</sup> Although EPA is not assessing the availability of state judicial review for PSD permits issued by Utah, as the CAA makes no requirements regarding such availability, EPA also notes that the comment does not explain, for example, why denial of a petition to intervene in a state administrative PSD permit proceeding would not exhaust the petitioner's administrative remedies and therefore make state judicial review available to the petitioner.

<sup>20</sup> Similarly, a proposed conforming amendment to UAC section R307-103 (containing the current administrative procedures for adjudicative proceedings under the Utah Air Conservation Act) was published May 1, 2011, but no notice of effective date has been published. The status of these proposals is confirmed by the Utah Division of Administrative Rules Web page, Rules Effective Since Last Codification, available at <http://www.rules.utah.gov/publicat/codificationsegue.htm> (last visited June 29, 2011).

<sup>21</sup> The monitoring data provided by WEG to support this argument is available in the docket for this action.

resources necessary "to attain and maintain the NAAQS."

*EPA Response:* EPA disagrees with the commenter's view that the monitor data asserted by the commenter has a bearing on the action on the State's infrastructure SIP submission. First, there are currently no nonattainment areas designated in Utah for the 1997 ozone NAAQS. Thus, the State is not currently under an obligation to submit a SIP to meet the requirements of Part D of title I. More importantly, as explained in the NPR, Part D requirements are outside the scope of this action. EPA therefore disagrees with the assertion that, as a result of the cited monitoring data, EPA cannot approve the Utah infrastructure SIP for the 1997 ozone NAAQS.

Furthermore, EPA notes that data cited by the commenter is also not of the type that is needed for making attainment determinations. The monitoring data referenced by the commenter was collected by industrial entities at non-regulatory monitors located in Indian country, outside the jurisdiction of the State of Utah. Furthermore, data collected by the National Park Service in Dinosaur National Monument (albeit also using a non-regulatory monitoring method) indicate a preliminary design value of only 73 ppb for the maximum 3-year average in 2009-2011. This data represents the ambient level at a geographic location within the Uinta Basin that is available outside Indian country in Utah. Thus, there is currently no data from monitoring sites on State jurisdiction lands in or near the Uinta Basin showing violations of the 1997 ozone standard.

*Comment No. 2:* The commenter claims that the State's commitment letter to update its ozone monitoring network does not represent a commitment that justifies conditional approval, as the letter does not commit to ensuring the actual installation of a monitor in the Saint George area in accordance with 40 CFR part 58, Appendix D, 4.1(b), and other requirements. The commenter also states that EPA did not clearly state the timeline by which a conditional approval reverts to a disapproval, and requests EPA to clarify this statement.

*EPA Response:* EPA disagrees with this comment. The commitment by the State is appropriately tailored to require the analysis necessary to determine if a monitor should be installed in the Saint George's area. The letter acknowledges that the State has not demonstrated that the existing Santa Clara monitor represents the maximum concentration site in the Saint George core-based

statistical area (CBSA) and that the Zion monitoring site operated by the National Park Service has recorded higher ozone values. The letter commits to completing the current saturation study to determine whether the Santa Clara site represents the maximum concentration site, and, if the study shows it necessary, to relocate the monitor in accordance with the requirements of section 4.1 of Appendix D. Of course, if the study is sufficient to demonstrate that the existing Santa Clara site meets the requirements of Appendix D, then no further action is necessary to comply with Appendix D.

Appendix D requires that Utah operate an ozone monitor in the Saint George CBSA, requires that at least one monitor in the Saint George CBSA be designed to measure maximum concentration, and that the siting of the Saint George monitor(s) be approved by the EPA Regional Administrator. EPA's conditional approval requires Utah to comply with these requirements within 1 year of the publication of the final rule. If the EPA Regional Administrator has not approved the monitor siting in the Saint George CBSA within 1 year of publication of the final rule, the conditional approval of the Utah infrastructure SIP for section 110(a)(2)(B) for the 1997 ozone NAAQS will automatically revert to disapproval.

*Comment No. 3:* The commenter expressed concern that the ozone monitoring sites in the Uinta Basin do not fully comply with 40 CFR part 58, specifically the requirement that "monitors are sited to ensure that maximum concentrations are recorded." The commenter also stated that, in order to meet the requirements of section 110(a)(2)(B), EPA must ensure the Utah SIP requires the State to monitor ozone during the winter months, particularly in the Uinta Basin. The commenter asserted that monitoring should continue during the winter months when the highest ambient levels occur.

*EPA Response:* EPA disagrees with the commenter's view that the current SIP is not approvable under section 110(a)(2)(B), based on the monitoring concerns raised by the commenter. The existing Utah ozone monitoring network and plan comply with 40 CFR part 58 requirements with respect to Uintah, Duchesne and Carbon counties. 40 CFR part 58 does not currently require ozone monitoring in the Uinta Basin, because ozone monitoring is only required in Metropolitan Statistical Areas (MSAs). Furthermore, the maximum concentration monitoring requirement of Appendix D applies specifically to monitoring in MSAs, defined in 40 CFR 58.1 as "a CBSA associated with at least

one urbanized area of 50,000 population or greater.” There are no such MSAs in Uintah, Duchesne, or Carbon counties.

With respect to the season during which monitoring is currently required, the required ozone monitoring seasons are provided in Appendix D, which currently specifies monitoring from May through September. EPA published a proposed revision to the ozone monitoring season for Utah on July 16, 2009 (74 FR 34525). EPA then published more recent data from Utah, Colorado and Kansas relevant to that proposal in a Notice of Data Availability on November 10, 2010 (75 FR 60936) and solicited comment on the applicability of that data to the required monitoring season at that time. If EPA finalizes the proposed revisions to the ozone monitoring season for Utah, the monitoring season will be extended and EPA anticipates that this would help to address the underlying concern of the commenters. At this point, however, Utah complies with the existing monitoring season requirements of Appendix D.

*Comment No. 4:* The commenter states that EPA cannot approve Utah’s SIP as meeting CAA section 110(a)(2)(L) requirements. Citing 42 U.S.C. section 7661a(b)(3)(B)(v) and 40 CFR 70.9(b)(2)(iv), the commenter argues that Utah’s Title V program does not increase permit fees each year in accordance with the Consumer Price Index as required.

*EPA Response:* EPA disagrees with this comment. As stated in the text of the section, 110(a)(2)(L) is no longer applicable to Title V operating permit programs after approval of such programs. As noted in the NPR, the Administrator’s final approval of Utah’s Title V operating permit program, including the Title V fee program, became effective on July 10, 1995 (60 FR 30192). Therefore, EPA concludes that the Utah infrastructure SIP for the 1997 ozone NAAQS meets the requirements of section 110(a)(2)(L) with respect to the Title V program.

### III. Final Action

In this action, EPA is approving in full the following section 110(a)(2) infrastructure elements for Utah for the 1997 ozone NAAQS: (A), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is conditionally approving section 110(a)(2)(B) for the 1997 ozone NAAQS, and will fully approve this element if Utah takes the measures detailed in the State’s May 12, 2011 commitment letter within one year after the date of this final action. If, however, Utah does not implement the measures specified in its commitment within one year after the

date of this action, EPA’s conditional approval will automatically revert to disapproval of the infrastructure SIP for section 110(a)(2)(B) for the 1997 ozone NAAQS.

### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet Federal requirements; this action does not impose additional requirements beyond those imposed by state law. For that reason, this 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 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, this 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

Dated: June 30, 2011.

**James B. Martin,**

*Regional Administrator, Region 8.*

40 CFR part 52 is amended as follows:

### PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

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

### Subpart TT—Utah

- 2. Section 52.2355 is added to read as follows:



**§ 52.2355 Section 110(a)(2) infrastructure requirements.**

On December 3, 2007 Jon L. Huntsman, Jr., Governor, State of Utah, submitted a certification letter which provides the State of Utah's SIP provisions which meet the requirements of CAA Section 110(a)(1) and (2) relevant to the 1997 Ozone NAAQS. On December 21, 2009 M. Cheryl Heying, Director, Utah Division of Air Quality, Department of Environmental Quality for the State of Utah, submitted supporting documentation which provides the State of Utah's SIP provisions which meet the requirements of CAA Section 110(a)(1) and (2) relevant to the 1997 Ozone NAAQS.

[FR Doc. 2011-18416 Filed 7-21-11; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-R08-OAR-2009-0809; FRL-9442-1]

**Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Colorado**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving the State Implementation Plan (SIP) submission from the State of Colorado to demonstrate that the SIP meets the requirements of Sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the "infrastructure elements" of section 110(a)(2). The State of Colorado submitted a certification, dated January 7, 2008, that its SIP met these requirements for the 1997 ozone NAAQS. The certification was determined to be complete on March 27, 2008 (73 FR 16205).

**DATES:** *Effective Date:* This final rule is effective August 22, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2009-0809. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. 303-312-6142, [dolan.kathy@epa.gov](mailto:dolan.kathy@epa.gov).

**SUPPLEMENTARY INFORMATION:****Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

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**I. Background**

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several "infrastructure elements," listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and

the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time a state develops and submits its SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions a state's existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.<sup>1</sup>

On March 27, 2008, EPA published a final rule entitled, "Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS" (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or had failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that Colorado had submitted a complete SIP ("Infrastructure SIP") to meet these requirements.

On May 18, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of Colorado (76 FR 28707) to act on the State's Infrastructure SIP for the 1997 ozone NAAQS. Specifically, in the NPR EPA proposed approval of Colorado's SIP as meeting the requirements of all section 110(a)(2) elements with respect to the 1997 ozone NAAQS, aside from elements 110(a)(2)(D)(i), 110(a)(2)(I), and the visibility protection requirement of element 110(a)(2)(J), on which EPA did not propose action.<sup>2</sup> EPA received a comment on section 110(a)(2)(E)(ii), and EPA is not finalizing today its proposed approval for this sub-element in order to fully respond to that comment.

EPA proposed to approve element 110(a)(2)(C) for the 1997 ozone NAAQS in the event that the State clarified (or modified) its January 7, 2008 certification to ensure consistency with two rules related to regulation of

<sup>1</sup> Memorandum from William T. Harnett, Director, Air Quality Policy Division, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards" (Oct. 2, 2007).

<sup>2</sup> See the NPR (76 FR 28707) for further explanation regarding the omission of elements 110(a)(2)(D)(i) and 110(a)(2)(I) from the proposal.