the settlement will be filed with the ALJ or the ARB, as appropriate.

(e) Any settlement approved by OSHA, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in United States district court pursuant to § 1985.113.

§ 1985.112 Judicial review.

(a) Within 60 days after the issuance of a final order under §§ 1985.109 and 1985.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB or the ALJ, as the case may be, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

§ 1985.113 Judicial enforcement.

Whenever any person has failed to comply with a final order, including one approving a settlement agreement, issued under CFPA, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. The Secretary also may file a civil action seeking enforcement of the order in the United States district court for the District of Columbia. Whenever any person has failed to comply with a preliminary order of reinstatement, the person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the appropriate district court of the United States.

§ 1985.114 District court jurisdiction of retaliation complaints.

(a) The complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy, either:

(1) Within 90 days after receiving a written determination under § 1985.105(a) provided that there has been no final decision of the Secretary; or

(2) If there has been no final decision of the Secretary within 210 days of the filing of the complaint.

(b) At the request of either party, the action shall be tried by the court with a jury.

(c) A proceeding under paragraph (a) of this section shall be governed by the same legal burdens of proof specified in § 1985.109. The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including:

(1) Reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(2) The amount of back pay, with interest;

(3) Compensation for any special damages sustained as a result of the discharge or discrimination; and

(4) Litigation costs, expert witness fees, and reasonable attorney fees.

(d) Within seven days after filing a complaint in Federal court, a complainant must file with OSHA, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint. A copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

§ 1985.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue such orders that justice or the administration of CFPA requires.

[FR Doc. 2014–07380 Filed 4–2–14; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0408; FRL–9909–11–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Infrastructure Requirements for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The State of Delaware has made a submittal addressing the infrastructure requirements for the 2008 ozone NAAQS.

DATES: This final rule is effective on May 5, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2013–0408. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control (DNREC), 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 30, 2013 (78 FR 53709), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. In the NPR, EPA proposed approval of Delaware's submittal that provides the basic elements specified in section 110(a)(2) of the CAA, necessary to implement, maintain, and enforce the 2008 ozone NAAQS.

II. Summary of SIP Revision

On March 27, 2013, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a SIP revision that addresses the infrastructure elements specified in section 110(a)(2) of the CAA, necessary to implement, maintain and enforce the 2008 ozone NAAQS. This submittal addressed the following infrastructure elements of section 110(a)(2): (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), and (M). EPA has analyzed the above identified submission and is approving the submittal as addressing the requirements of section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA. As discussed in the NPR, EPA will take separate action on the portions of the submittal which address section 110(a)(2)(I) for the Part D, Title I nonattainment planning requirements and section 110(a)(2)(D)(i)(I) which addresses significant contribution to nonattainment or interference with maintenance of the NAAQS in another state.

The rationale for EPA's rulemaking action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD for this rulemaking is available at *www.regulations.gov,* Docket number EPA–R03–OAR–2013–0408.

III. Public Comments and EPA Responses

EPA received three sets of comments on the August 30, 2013 proposed approval of Delaware's 2008 ozone infrastructure SIP. The commenters included the State of Connecticut, the Delaware Solid Waste Authority (DSWA), and the Sierra Club. A full set of these comments is provided in the docket for today's final rulemaking action.

A. State of Connecticut

Comment: The State of Connecticut asserts that its ability to attain the 2008 ozone NAAQS is compromised by interstate transport of pollution from upwind states. Connecticut claims it would require additional reductions from upwind emissions to address transported emissions into Connecticut and to be able to attain the 2008 ozone NAAQS based on modeling from the Ozone Transport Commission and modeling done by EPA for the Cross State Air Pollution Rule (CSAPR). Connecticut comments that remaining measures to reduce in-state emissions were limited and not cost effective. Connecticut asserts that it and other states like Delaware had done their fair share to reduce in-state emissions while upwind states failed to fulfill minimal obligations under the CAA. Connecticut states that section 110(a)(1) of the CAA requires states like Delaware to submit, within three years of promulgation of a new NAAQS, a plan which provides for implementation, maintenance, and enforcement of such NAAQS within the state. Connecticut states that Delaware had submitted a plan to address its good neighbor obligations under section 110(a)(2)(D)(i)(I) of the CAA for Delaware's March 27, 2013 infrastructure SIP for the 2008 ozone NAAQS. Connecticut states that it had previously commented on Delaware's draft infrastructure SIP for the 2008 ozone NAAQS by stating Connecticut believed Delaware's already adopted control measures are sufficient to alleviate Delaware's contribution to Connecticut's ozone problems by December 15, 2015, which is Connecticut's attainment deadline for the 2008 ozone NAAQS.

Connecticut argues that EPA lacks the discretion to defer action on Delaware's good neighbor portion of Delaware's infrastructure SIP for 2008 ozone NAAQS (for section 110(a)(2)(D)(i)(I) of the CAA). Connecticut further argues that the CAA does not give EPA discretion to approve a SIP without the good neighbor provision on the grounds that EPA would take separate action on Delaware's obligations under section 110(a)(2)(D)(i)(I). Connecticut asserts that EPA should either approve Delaware's infrastructure SIP with respect to its impact on Connecticut's ambient ozone levels or address Delaware's failure to satisfy its good neighbor obligations by promulgating a Federal Implementation Plan (FIP) under section 110(c)(1) of the CAA within two years to address section 110(a)(2)(D)(i)(I) of the CAA.

Response: EPA acknowledges the commenter's concerns with regard to the interstate transport of ozone and ozone precursors. EPA also agrees in general with the commenter that each state should address its contribution to another state's nonattainment and that section 110(a)(1) of the CAA requires states like Delaware to submit within three years of promulgation of a new or revised NAAQS a plan which provides for implementation, maintenance and enforcement of such NAAQS within the state. Many of the commenter's concerns, however, go to issues beyond the scope of this rulemaking action and the commenter does not allege that deferring action on Delaware's SIP will have any negative impact on Connecticut. To the contrary, the commenter asserts that ''it is very likely that the adopted control programs noted in the DNREC proposed SIP are sufficient to alleviate Delaware's contributions to Connecticut's ozone problems'' by Connecticut's attainment deadline for the 2008 eight-hour ozone NAAQS.

In this rulemaking action, EPA is not taking any final action with respect to the provisions in section 110(a)(2)(D)(i)(I)—the portion of the good neighbor provision that addresses emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. EPA did not propose to take any action with respect to Delaware's obligations pursuant to section 110(a)(2)(D)(i)(I) and is not, in this notice, taking any such action. As explained in this rulemaking action, while section 110(k) of the CAA requires EPA to act on all SIP submissions whether required or not, nothing in section 110(k) requires EPA to act on all parts of a SIP submission in a single action or requires EPA to act on Delaware's section 110(a)(2)(D)(i)(I) submission at this time. Moreover, even if EPA were to disapprove the 110(a)(2)(D)(i)(I) portion of the SIP submitted by Delaware, pursuant to the U.S. Court of Appeals for the District of Columbia (DC Circuit Court) opinion in *EME Homer City,* any such disapproval would not at this time trigger an obligation for EPA to promulgate a FIP within two years.

EPA disagrees with the commenter that EPA cannot defer action on the 110(a)(2)(D)(i)(I) portion of the Delaware SIP submittal and therefore must now approve or disapprove Delaware's section 110(a)(2)(D)(i)(I) SIP submission for the 2008 ozone NAAQS. EPA indicated in its notice of proposed rulemaking that it intended to take separate rulemaking action on the 110(a)(2)(D)(i)(I) portion of Delaware's SIP submission and nothing in the CAA bars EPA from concluding that action on that portion of the submittal should be deferred. EPA found Delaware's March 27, 2013 infrastructure SIP for the 2008 ozone NAAQS complete on May 20, 2013. Therefore, pursuant to section 110(k)(2) of the CAA, EPA has until May 20, 2014 to act on all portions of Delaware's submittal. In this case, EPA has chosen to act on a portion of the SIP submittal prior to that deadline. The commenter has not identified any provision of the CAA that prohibits EPA from doing so. The commenter has also not identified any provision of the CAA that prohibits EPA from approving a SIP without the good neighbor provision or

that prohibits EPA from deciding to act separately on the portion of a SIP submission addressing that provision. Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve the states' SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. *See* S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1987)).

As such, EPA interprets its authority under section 110(k)(3) as affording EPA the discretion to approve or conditionally approve individual elements of Delaware's infrastructure SIP submission for the 2008 ozone NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) of the CAA with respect to that NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of section 110(a)(2)(D)(i)(I) of the CAA, as severable from the other infrastructure elements and interprets section 110(k)(3) of the CAA as allowing it to act on individual severable measures in a plan submission. While EPA acknowledges it has an obligation under section 110(k)(2) to act on the 110(a)(2)(D)(i)(I) portion of the March 27, 2013 SIP submittal, EPA believes it has discretion under section 110(k) of the CAA to act upon the various individual elements of the State's infrastructure SIP submission, separately or together, as appropriate. The commenter has not raised a compelling legal or environmental rationale for an alternate interpretation. As the time for EPA to act upon the 110(a)(2)(D)(i)(I) portion of Delaware's submittal has not yet expired, EPA believes it may appropriately act upon the remainder of the SIP submittal and take action on the 110(a)(2)(D)(i)(I) portion in a separate action. And the decision to defer action on the portion of the submission addressing section 110(a)(2)(D)(i)(I) of the CAA is reasonable in light of the uncertainty created by the Supreme Court review of the DC Circuit Court decision in *EME Homer City*—a decision which, among other things, interpreted that section of the CAA.

Additionally, EPA notes that the commenter has not demonstrated that EPA could take either of the actions requested. The commenter has neither demonstrated that the 110(a)(2)(D)(i)(I) portion of the SIP submission is sufficient to prohibit any emissions that significantly contribute to nonattainment or interfere with maintenance in any other state, nor demonstrated that EPA at this time could establish a two year deadline for EPA to promulgate a FIP addressing any such emissions. In light of the DC Circuit Court opinion in *EME Homer City,* there is not at this time any basis for contending that EPA must issue a FIP within two years of any future disapproval of Delaware's 110(a)(2)(D)(i)(I) SIP submission as EPA has not yet quantified Delaware's good neighbor obligations under the 2008 ozone NAAQS.

EPA has historically interpreted the CAA as requiring states to submit SIPs addressing the requirements of section 110(a)(2)(D)(i)(I) of the CAA within three years of the promulgation or revision of a NAAQS. Similarly, EPA has interpreted the CAA as providing that any disapproval of a 110(a)(2)(D)(i)(I) SIP submission, or a finding that a state has failed to make such a submission, would trigger an obligation for EPA to promulgate a FIP within two years if the state did not correct the SIP deficiency within that time. EPA continues to agree that the plain language of the statute establishes these obligations. However, the DC Circuit Court clearly articulated in its opinion in *EME Homer City* that SIPs under section 110(a)(2)(D)(i)(I) of the CAA are not due until EPA has defined a state's contribution to nonattainment or interference with maintenance in another state. *See EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), *cert. granted* 133 U.S. 2857 (2013). EPA has not yet done this for the 2008 ozone NAAQS. While the Supreme Court has agreed to review the *EME Homer City* decision, the DC Circuit Court's decision currently remains in place. EPA intends to act in accordance with the *EME Homer City* opinion unless it is reversed or otherwise modified by the Supreme Court. *See also* 78 FR 14683 (concluding that, under the DC Circuit Court opinion in *EME Homer City,* disapproval of a 110(a)(2)(D)(i)(I) SIP submitted by Kentucky did not start a FIP clock).

Further, because the EPA rule known as CSAPR reviewed by the DC Circuit Court in *EME Homer City* was designated by EPA as a ''nationally applicable'' rule within the meaning of section 307(b)(1) of the CAA with petitions for review of CSAPR required to be filed in the DC Circuit Court, EPA believes the DC Circuit Court's decision in *EME Homer City* is also nationally applicable. As such, EPA does not intend to take any actions, even if they are only reviewable in another Federal Circuit Court of Appeals that are inconsistent with the decision of the DC Circuit Court. For this reason, even if EPA were to disapprove the 110(a)(2)(D)(i)(I) SIP submission from Delaware, any such disapproval would not at this time trigger an obligation for EPA to issue a FIP within two years.

In sum, the concerns raised by the commenter do not establish that it is inappropriate or unreasonable for EPA to approve the portions of Delaware's March 27, 2013 infrastructure SIP submission for the 2008 ozone NAAQS described in the proposed approval. Moreover, EPA notes that it is actively working with state partners to assess next steps to address air pollution that crosses state boundaries and has begun work on a rulemaking to address transported air pollution affecting the ability of states in the eastern half of the United States to attain and maintain the 2008 ozone NAAQS. That rulemaking action is separate from this SIP approval rulemaking action. It is also technically complex and must comply with the rulemaking requirements of section 307(d) of the CAA.

B. Delaware Solid Waste Authority

Comment: DSWA comments on the possibility of Delaware adopting the Ozone Transport Commission's anti-idling recommendations for certain motor vehicles. DSWA expresses its concern with the temperature exemptions meant to safeguard the equipment operators. DSWA recommends changing the temperature range when exemptions are allowed from anti-idling regulations from below 25 degrees Fahrenheit and above 85 degrees Fahrenheit to below 40 degrees Fahrenheit and above 75 degrees Fahrenheit. DSWA asserts the recommended temperature exemption was overly optimistic and the narrower temperature range (below 40 degrees Fahrenheit and above 75 degrees Fahrenheit) would allow operation of heating and air conditioning systems in certain motor vehicles when idling when temperature control may be necessary for safeguarding operators of those motor vehicles.

Response: EPA appreciates DSWA's comment. However, in this rulemaking action, EPA is neither approving nor disapproving any existing state rules or regulations into the Delaware SIP. Thus, the comment is not relevant to this

rulemaking action. Delaware already has an anti-idling regulation, Regulation 1145, Excessive Idling of Heavy Duty Vehicles. In addition, EPA has previously approved this regulation, Regulation 1145, into the Delaware SIP. *See* 40 CFR 52.420(c) and 74 FR 51792, October 8, 2009. While Delaware's infrastructure SIP for the 2008 ozone NAAQS has listed Regulation 1145 as one enforceable control measure for section 110(a)(2)(A) of the CAA which meets applicable requirements of the CAA, EPA is acting on the infrastructure SIP as meeting the section 110(a)(2) requirements overall. As EPA stated in ''Guidance on Infrastructure SIP Elements under CAA Sections 110(a)(1) and 110(a)(2),'' dated September 13, 2013 (Infrastructure SIP Guidance), ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.'' Infrastructure SIP Guidance at p. 2. EPA has established that Delaware's existing SIP meets requirements of section 110(a)(2)(A) of the CAA and is not adding any regulations to the Delaware SIP. As DSWA is commenting about suggested changes in a provision which is already Delaware law, EPA suggests DSWA pursue its comments with DNREC. EPA believes Delaware's infrastructure SIP adequately address section 110(a)(2)(A) of the CAA for the 2008 ozone NAAQS.

C. Sierra Club

Comment 1: Sierra Club contends that EPA cannot approve the section 110(a)(2)(A) portion of Delaware's 2008 ozone infrastructure SIP revision because the plain language of 110(a)(2)(A) of the CAA, legislative history of the CAA, case law, EPA regulations such as 40 CFR 51.112(a), and EPA interpretations in rulemakings, require the inclusion in an infrastructure SIP of enforceable emission limits to prevent NAAQS violations in areas not designated nonattainment. Specifically, Sierra Club cites air monitoring reports for Kent County, Delaware indicating a violation of the NAAQS based on Kent County's 2010–2012 design value. The commenter states EPA must disapprove the infrastructure SIP because it impermissibly fails to include enforceable eight-hour ozone emission limits to ensure attainment and maintenance of the NAAQS in areas designated attainment. Sierra Club comments that Delaware had only added two provisions, related to visibility and state boards, to its ''old SIP'' which addressed the 1997 ozone NAAQS and claims the Delaware SIP is insufficient for Delaware to attain and maintain the 2008 ozone NAAQS as evidenced by the monitoring data from Kent County showing violation of the 2008 ozone NAAQS for 2010–2012.

The commenter alleges that this violation in Kent County, a designated attainment area, demonstrates that the Delaware infrastructure SIP lacks adequate emission limits to attain and maintain the 2008 ozone NAAQS and thus EPA must disapprove the infrastructure SIP. Sierra Club notes that Delaware has not specified how it plans to address the violation in Kent County nor established emission limits to reduce the ''dangerous ozone concentrations'' in the county. The commenter states EPA must require Delaware to amend its infrastructure SIP to include enforceable eight-hour ozone emission limits that ensure sources cannot cause violations of the 2008 ozone NAAQS in areas designated attainment. Sierra Club contends that the infrastructure SIP must be disapproved because it fails to include adequate enforceable eight-hour emission limitations for sources of ozone precursors to ensure attainment and maintenance of the NAAQS in areas designated attainment in violation of section 110(a)(1) and (a)(2)(A) of the CAA and 40 CFR 51.112.

Response 1: EPA disagrees with the commenter that the statute is clear on its face that infrastructure SIPs must include detailed attainment and maintenance plans for all areas of the state and must be disapproved if air quality data that became available late in the process or after the infrastructure SIP was due and submitted changes the status of areas within the state. In subsections (a) through (e) of this rulemaking action, EPA addresses the commenter's specific arguments that the statutory language, legislative history, case law, EPA regulations, and prior rulemaking actions by EPA mandate the narrow interpretation they advocate. EPA believes that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS.

As an initial matter, EPA disagrees that air quality monitoring that became available four years following promulgation of the 2008 ozone NAAQS and after the ozone infrastructure SIP was submitted provides a basis for disapproving the Delaware ozone infrastructure SIP. States must develop SIPs based on the information they have during the SIP development process and data that becomes available after that process is completed cannot undermine the reasonable assumptions that were made by the state based on the information it had available as it developed the plan. Thus, the data cited by the commenter should not be considered in determining whether the SIP should be approved. The suggestion that Delaware's ozone infrastructure SIP must include measures addressing a violation of the standard that did not occur until shortly after the SIP was due and submitted cannot be supported. The CAA provides states with three years to develop infrastructure SIPs and states cannot reasonably be expected to address the annual change in an area's design value for each year over that period, nor to predict the air quality data in periods after development and submission of the SIPs. Moreover, the CAA recognizes and has provisions to address changes in air quality over time, such as an area slipping from attainment to nonattainment or changing from nonattainment to attainment. These include provisions providing for redesignation in section 107(d) of the CAA and provisions in section 110(k)(5) of the CAA allowing EPA to call on the state to revise its SIP, as appropriate.

The commenter suggests that EPA must disapprove the Delaware ozone infrastructure SIP because the fact that an area in Delaware has air quality data slightly above the standard proves that the infrastructure SIP is inadequate to demonstrate maintenance for that area. EPA disagrees because we do not believe that section 110(a)(2)(A) of the CAA requires detailed planning SIPs demonstrating either attainment or maintenance for specific geographic areas of the state. The infrastructure SIP is triggered by promulgation of the NAAQS, not designation. Moreover, infrastructure SIPs are due three years following promulgation of the NAAQS and designations are not due until two years (or in some cases three years) following promulgation of the NAAQS. Thus, during a significant portion of the period that a state has available for developing the infrastructure SIP, it does not know what the designation will be for individual areas of the state.[1]

[1] While it is true that there may be some monitors within a state with values so high as to make a

Continued

In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state.

Our interpretation that infrastructure SIPs are more general planning SIPs is consistent with the statute as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in ''air quality control regions'' (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with the NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) of the CAA specified that the section 110 plan provide for ''attainment'' of the NAAQS and section 110(a)(2)(B) specified that the plan must include ''emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].'' In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of the state were violating the NAAQS (i.e., were nonattainment) or were meeting the NAAQS (i.e., were attainment) and established specific planning requirements in section 172 of the CAA for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182 of the CAA. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A) of the CAA. Additionally, Congress replaced the clause ''as may be necessary to insure attainment and maintenance [of the NAAQS]'' with ''as may be necessary or appropriate to meet the applicable requirements of this chapter.'' Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. And, more detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS.

For all of these reasons, EPA disagrees with the commenter that EPA must disapprove an infrastructure SIP revision if there are monitored violations of the standard in the state and the section 110(a)(2)(A) revision does not have detailed plans for demonstrating how the state will bring that area into attainment. Rather, EPA believes that the proper inquiry at this juncture is whether the state has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the submittal.

Moreover, as addressed in EPA's proposed approval for this rule, Delaware submitted a list of existing emission reduction measures in the SIP that control emissions of volatile organic compounds (VOCs) and nitrogen oxides (NOx). Delaware's SIP revision reflects several provisions that have the ability to reduce ground level ozone and its precursors. The Delaware SIP relies on measures and programs used to implement previous ozone NAAQS. Because there is no substantive difference between the previous ozone NAAQS and the more recent ozone NAAQS, other than the level of the standard, the provisions relied on by Delaware will provide benefits for the new NAAQS; in other words, the measures reduce *overall* ground-level ozone and its precursors and are not limited to reducing ozone levels to meet one specific NAAQS.

EPA shares the commenter's concern regarding Kent County's violation of the 2008 eight-hour ozone NAAQS in 2010–2012 and will work appropriately with the State to address any issues.[2] Further, in approving Delaware's infrastructure SIP revision, EPA is affirming that Delaware has sufficient authority to take the types of actions required by the CAA in order to bring such areas back into attainment.

a. The Plain Language of the CAA

Comment 2: The commenter states that on its face the CAA ''requires I–SIPs to be adequate to prevent violations of the NAAQS.'' In support, the commenter quotes the language in section 110(a)(1) which requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) of the CAA which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which commenter claims includes the maintenance plan requirement. Sierra Club notes the CAA definition of emission limit and reads these provisions together to require ''enforceable emission limits on source emissions sufficient to ensure maintenance of the NAAQS.''

Response 2: EPA disagrees that section 110 is ''clear on its face'' and must be interpreted in the manner suggested by Sierra Club. As explained earlier in this rulemaking action, section 110 of the CAA is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) that the plan provide for ''implementation, maintenance and enforcement'' to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean for purposes of section 110 of the CAA that the state may rely on measures already in place to address the pollutant at issue or any new control measures

nonattainment designation of the county with that monitor almost a certainty, the geographic boundaries of the nonattainment area associated with that monitor would not be known until EPA issues final designations. In any event, the Kent County area of concern to the commenter does not fit that description.

[2] EPA notes that preliminary monitoring data for 2013 indicates that Kent County, Delaware is not violating the 2008 ozone NAAQS for the period 2011–2013. The 2013 data is uncertified. States are required to certify 2013 data by May 1, 2014.

that the state may choose to submit. As EPA stated in ''Guidance on Infrastructure SIP Elements under CAA Sections 110(a)(1) and 110(a)(2),'' dated September 13, 2013 (Infrastructure SIP Guidance), ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both. Overall, the infrastructure SIP submission process provides an opportunity . . . to review the basic structural requirements of the air agency's air quality management program in light of each new or revised NAAQS.'' Infrastructure SIP Guidance at p. 2.

The commenter makes a general allegation that Delaware does not have regulations sufficient to ensure compliance with the 2008 ozone NAAQS ''proven by the fact that Kent County violated the 2008 Ozone NAAQS.'' EPA addressed the adequacy of Delaware's infrastructure SIP for 110(a)(2)(A) purposes to meet applicable requirements of the CAA in the TSD accompanying the August 30, 2013 NPR and explained why EPA believes the SIP includes enforceable emission limitations and other control measures necessary for maintenance of the 2008 ozone NAAQS throughout the state. For Delaware, including Kent County, these include Delaware's enforceable emission limitations and other control measures at: 7 DE Admin. Codes 1113, 1124, 1141, 1144, 1145, 1146, and 1148. These regulations are identified as part of the Delaware SIP at 40 CFR 52.420(c). Enforceable emission limitations and schedules are also contained in Delaware's submitted Reasonable Further Progress (RFP) and attainment demonstration SIPs that were approved on April 8, 2010 (75 FR 17863) and October 5, 2012 (77 FR 60914), respectively.

b. The Legislative History of the CAA

Comment 3: Sierra Club cites two excerpts from the legislative history of the CAA Amendments of 1970 claiming they support an interpretation that SIP revisions under section 110 of the CAA must include emissions limitations sufficient to show maintenance of the NAAQS in Delaware, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 3: As provided in the previous response, the CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning demonstrating attainment. In any event, the two excerpts of legislative history cited by the commenter merely provide that states should include enforceable emission limits in their SIPs and they do not mention or otherwise address whether states are required to include maintenance plans for all areas of the state as part of the infrastructure SIP. Moreover, the cited legislative history pertains to section 110 as promulgated in 1970 and not to section 110 as amended by the CAA Amendments of 1990. As provided earlier in this rulemaking action, the TSD for the proposed rule explains why EPA believes the SIP includes enforceable emissions limitations for the State of Delaware including Kent County.

c. Case Law

Comment 4: Sierra Club also discusses several cases applying the CAA which Sierra Club claims support their contention that courts have been clear that section 110(a)(2)(A) of the CAA requires enforceable emissions limits in infrastructure SIPs to prevent violations of the NAAQS. Sierra Club first cites to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meet the national standards.'' Sierra Club also cites to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS and *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110 of the CAA, quoting *Alaska Dept. of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also states that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The commenter also quotes several additional opinions in this vein. *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174, 1180 (9th Cir. 2012) (''The Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations''); *Hall* v. *EPA* 273 F.3d 1146, 1153 (9th Cir. 2001) (''Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State''). Finally, they cited *Mich. Dept. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS.

Response 4: None of the cases cited by the commenter support the commenter's contention that section 110(a)(2)(A) is clear that infrastructure SIPs must include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state nor do they shed light on how section 110(a)(2)(A) of the CAA may reasonably be interpreted. With the exception of *Train,* none of the cases cited by the commenter concerned the interpretation of section 110(a)(2)(A) of the CAA (or section 110(a)(2)(B) of the pre-1990 CAA). Rather, in the context of a challenge to an EPA action on revisions to a SIP that were required and approved as meeting other provisions of the CAA or in the context of an enforcement action, the D.C. Circuit Court references section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background section of its decision.

In *Train,* 421 U.S. 60, a case that was decided almost 40 years ago, the D.C. Circuit Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were ''postponements'' that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The D.C. Circuit Court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus the issue was not whether a section 110 SIP needs to provide for attainment or whether emissions limits are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or

maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) of the CAA might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The D.C. Circuit Court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the D.C. Circuit Court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of ''emissions limitation'' not whether section 110 of the CAA requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion quoted by the commenter does not interpret but rather merely describes section 110(a)(2)(A). The commenter does not raise any concerns about whether the measures relied on by the state in the infrastructure SIP are ''emissions limitations'' and the decision in this case has no bearing here.[3] In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the D.C. Circuit Court was reviewing a FIP that EPA promulgated after a long history of the state failing to submit an adequate SIP. The D.C. Circuit Court cited generally to section 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations, but this language was not part of the court's holding in the case. The commenter suggested that *Alaska Dept. of Envtl. Conservation,* 540 U.S. 461, stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the D.C. Circuit Court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the court makes no mention of the changed language. Furthermore, the commenter also quotes the D.C. Circuit Court's statement that ''SIPs must include certain measures Congress specified'' but that statement specifically referenced the requirement in section 110(a)(2)(C)of the CAA, which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's ''new source'' permitting program, not its infrastructure SIP.

Two of the cases cited by the commenter, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret section 110(l) of the CAA, the provision governing ''revisions'' to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the D.C. Circuit Court cited to section 110(a)(2)(A) of the CAA solely for the purpose of providing a brief background of the CAA.

d. EPA Regulations, Such as 40 CFR 51.112(a)

Comment 5: The comments cite to 40 CFR 51.112(a), providing that ''[e]ach plan must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS].'' The commenter asserts that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. The commenter states that ''[a]lthough these regulations were developed before the Clean Air Act separated infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations apply to I–SIPs.'' The commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that ''[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act . . .'' (51 FR 40656, November 7, 1986).

Response 5: The commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits ''adequate to prohibit NAAQS violations'' and adequate or sufficient to ensure the maintenance of the NAAQS is not supported. As an initial matter, EPA notes and the commenter recognizes this regulatory provision was initially promulgated and ''restructured and consolidated'' prior to the CAA Amendments of 1990, in which Congress removed all references to ''attainment'' in section 110(a)(2)(A). And, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing ''control strategy'' SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as section 175A and 182. The commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's action ''restructuring and consolidating'' provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were ''beyond the scope'' of the rulemaking. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather was meant merely to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new ''Part D'' attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. *Id.* at 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new ''part D'' of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (''Control strategy: SO_x and p.m. (portion)''), 51.14 (''Control strategy: CO, HC, O_x and NO_2 (portion)''), 51.80 (''Demonstration of attainment: Pb (portion)''), and 51.82 (''Air quality data (portion)''). *Id.* at 40660. Thus, the present-day 51.112 contains consolidated provisions that are focused on control strategy SIPs and the infrastructure SIP is not such a plan.

e. EPA Interpretations in Other Rulemakings

Comment 6: The commenter also references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs and claims they were actions in which EPA relied on section 110(a)(2)(A) of the CAA and 40 CFR 51.112 to reject infrastructure SIPs. The commenter first points to a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the sulfur dioxide (SO_2) NAAQS. In that action,

[3] While the commenter does contend that the State shouldn't be allowed to rely on emission reductions that were developed for the prior ozone standards (which we address above), commenter does not claim that any of the measures are not ''emissions limitations'' within the definition of the CAA.

EPA cited section 110(a)(2)(A) of the CAA as a basis for disapproving a revision to the State plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, Sierra Club cites a 2013 proposed disapproval of a revision to the SO_2 SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the State. EPA relied on 40 CFR 51.112(a) in proposing to reject the revision, stating that the State had not demonstrated that the emission limit was ''redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions.'' EPA further stated in that proposed disapproval that the State had not demonstrated that removal of the limit would not ''affect the validity of the emission rates used in the existing attainment demonstration.''

Response 6: EPA does not agree that the two prior actions referenced by the commenter establish how EPA reviews infrastructure SIPs. It is clear from both the final Missouri rule and the proposed Indiana rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent. EPA's partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP in 71 FR 12623 addressed a control strategy SIP and not an infrastructure SIP. The Indiana action provides even less support for the commenter's position. As an initial matter, the Indiana action is a proposal and thus cannot be presumed to reflect the Agency's final position. In any event, the review in that rule was of a completely different requirement than the 110(a)(2)(A) SIP. Rather, in that case, the State had an approved SO_2 attainment plan and was seeking to remove from the SIP provisions relied on as part of the modeled attainment demonstration. EPA proposed that the State had failed to demonstrate under section 110(l) of the CAA why the SIP revision would not result in increased SO_2 emissions and thus interfere with attainment of the NAAQS. Nothing in that rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved attainment plan will not interfere with attainment of the NAAQS.

Comment 7: Sierra Club states that EPA should disapprove Delaware's infrastructure SIP submittal for the 2008 ozone NAAQS with regard to section 110(a)(2)(D)(i)(II) (visibility prong) and 110(a)(2)(J) because the commenter asserts that Delaware failed to submit its five-year progress report for regional haze by the required date and EPA has not evaluated the report or taken final action on that report. Sierra Club states that Delaware's five-year progress report for regional haze was due on September 25, 2013 pursuant to 40 CFR 51.308(g) because Delaware's initial regional haze SIP was submitted on September 25, 2008. Sierra Club states EPA could not assess the efficacy of Delaware's regional haze SIP without reviewing the five-year progress report nor determine if the Delaware regional haze SIP was effective in improving visibility in other states. In addition, the commenter contends that Delaware does not have adequate best available retrofit technology (BART) limits because Delaware based its BART determination on comparing reductions that would be obtained under its multi-pollutant rule from BART and non-BART eligible sources to the reductions that would be obtained from just BART eligible sources applying BART. Therefore, Sierra Club states EPA should disapprove the visibility elements of the Delaware infrastructure SIP submittal for 2008 ozone NAAQS because NO_X is a visibility impairing pollutant.

Response 7: EPA disagrees with the commenter that EPA must disapprove the visibility elements of Delaware's ozone infrastructure SIP due to allegedly inadequate BART limits in its regional haze SIP. The Delaware regional haze SIP did not include source-specific BART emission limits but rather required alternative measures that the State showed would achieve greater reasonable progress than BART. *See* (76 FR 27973, May 13, 2011). EPA agreed, finding that the total emission reductions from Delaware's Regulation 1146, a multi-pollutant regulation for EGUs, greatly exceeded the reductions to be expected from BART at the four BART-eligible units in Delaware. *Id.; see also* (76 FR 42557, July 19, 2011). Although the commenter is now suggesting that the demonstration that Regulation 1146 would provide for greater reasonable progress than BART was flawed, EPA approved Delaware's regional haze plan as meeting the regional haze requirements, including those addressing BART, in July 2011. (76 FR 42557, July 19, 2011).

The adequacy of the measures in the Delaware regional haze SIP addressing the BART requirements, however, is irrelevant to the question of whether Delaware's SIP meets the requirements of section 110(a)(2)(D) of the CAA with respect to visibility. EPA interprets the visibility provisions in this section of the CAA as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. The regional haze rule at 40 CFR 51.308(d)(3) includes a similar requirement. EPA notes that in 2011, EPA determined that Delaware's regional haze SIP adequately prevents sources in Delaware from interfering with the reasonable progress goals adopted by other states to protect visibility during the first planning period. *See* 76 FR 27979. Specifically, EPA found that the Delaware regional haze SIP included the appropriate enforceable emission limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals set by New Jersey for the one Class I area influenced by Delaware emissions. *Id.* EPA also found that the Delaware regional haze SIP met the requirements of section 110(a)(2)(D)(i)(II) of the CAA regarding visibility for the 1997 eight-hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. 76 FR 27984 (proposal); 76 FR 42557 (final). EPA notes that the requirements of section 110(a)(2)(D)(i)(II) of the CAA regarding visibility for the 2008 ozone NAAQS are the same as those for the 1997 eight-hour ozone NAAQS and the earlier $PM_{2.5}$ standards. The commenter has not explained how the allegedly inadequate BART determination would affect these prior findings.

EPA also disagrees with the commenter that EPA must disapprove Delaware's ozone infrastructure SIP because the State has not submitted and EPA has not approved a regional haze progress report. The regional haze regulations at 40 CFR 51.308(g) require Delaware (and other states) to submit a report to EPA five years from the submittal of its initial regional haze SIP. In the report, the state must, among other things, assess whether its current regional haze SIP is sufficient to enable nearby states to meet their established reasonable progress goals. Subsequent to EPA's proposed approval of the ozone infrastructure SIP, Delaware submitted as a proposed SIP revision, dated September 24, 2013, its five-year progress report on its approved regional haze SIP. In a separate rulemaking

signed February 11, 2014, EPA has proposed to approve Delaware's progress report; however, final action on the September 24, 2013 submittal is not due pursuant to section 110(k)(2) of the CAA at this time. *See* (79 FR 10442, February 25, 2014). EPA accordingly disagrees with the commenter that EPA's *approval* of Delaware's five-year progress report is a required structural element necessary before EPA may approve Delaware's infrastructure SIP for element 110(a)(2)(D)(i)(II).

EPA also disagrees with the commenter that Delaware's five-year report was overdue at the time EPA proposed to approve Delaware's infrastructure SIP for the 2008 ozone NAAQS. On August 30, 2013, the date of EPA's proposed action on the Delaware infrastructure SIP, Delaware was under no obligation as yet to submit its five-year progress report to meet the requirements in 40 CFR 51.308(g). As correctly identified by Sierra Club, the Delaware five-year progress report required by 40 CFR 51.308(g) was due on September 25, 2013. Although EPA has not taken *final* action to approve Delaware's progress report, from EPA's review of data provided by Delaware in its five-year progress report, including EPA's review of emissions data from 2008 through 2011 on Delaware electric generating units (EGUs) from EPA's Clean Air Markets Division (CAMD) as provided by the State in its SIP submittal, emissions of SO_2, the primary contributor to visibility impairment in the Mid-Atlantic/Northeast Visibility Union (MANE–VU) region, have declined significantly in the State since the Delaware regional haze SIP was submitted to EPA on September 25, 2008. Emissions of NO_X from EGUs also have declined significantly since the regional haze SIP submittal. Specifically, Delaware's five-year progress report notes that total SO_2 emissions from point sources using ''currently available'' information were significantly less than the 2018 point source projections in the Delaware 2008 regional haze SIP submittal.[4] EPA's review of visibility data from Delaware in its five-year progress report also shows the Class I area impacted by sources within Delaware is meeting or below its reasonable progress goals. In addition, based on EPA's review of the Delaware five-year progress report as discussed in EPA's proposed approval of the report, EPA has no reason to question the accuracy of Delaware's negative declaration to EPA pursuant to 40 CFR 51.308(h) that no revision to Delaware's regional haze SIP is needed at this time to achieve established goals for visibility improvement and emissions reductions.

Therefore, based upon EPA's review of the relevant visibility data, emissions data, and modeling results provided by Delaware in the five-year progress report and upon Delaware's approved regional haze SIP, EPA continues to believe that the State's existing SIP contains adequate provisions prohibiting sources from emitting visibility impairing pollutants in amounts which would interfere with neighboring states' SIP measures to protect visibility.

In addition, with regard to the visibility protection aspect of section 110(a)(2)(J) of the CAA, as discussed in the TSD accompanying the NPR for this rulemaking, EPA stated that it recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the establishment of a new NAAQS such as the 2008 ozone NAAQS, however, the visibility and regional haze program requirements under part C of Title I of the CAA do not change and there are no applicable visibility obligations under part C ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. Given this, Delaware was under no obligation to address section 110(a)(2)(J) in its 2008 ozone infrastructure SIP.

Comment 8: Sierra Club contends that EPA should not approve Delaware's 2008 eight-hour ozone infrastructure SIP revision because Delaware's SIP fails to incorporate the 2008 ozone NAAQS of 75 parts per billion (ppb) in Delaware Regulation 1103 and therefore fails to meet requirements of section 110(a)(2)(A) and 110(a)(2)(E)(i) of the CAA.

Response 8: Sierra Club is correct that Regulation 1103, as reflected in the existing Delaware SIP, does not reference the 2008 ozone NAAQS. However, Sierra Club fails to explain why they believe the failure of this regulation to reference the 2008 ozone standard would prevent approval of the infrastructure SIP. Regulation 1103 specifically provides ''[t]he absence of a specific ambient air quality standard shall not preclude actions by the Department to control contaminants to assure protection, safety, welfare, and comfort of the people of the State of Delaware.'' Thus, even in the absence of an explicit reference to the 2008 ozone NAAQS, Regulation 1103 clearly provides that the State has the authority to adopt and implement regulations for that standard. Moreover, Sierra Club does not cite and EPA is not aware of any other provisions in Delaware's regulations that would undermine such authority. While certain regulations reference specific ozone NAAQS in the ''purposes'' section (*see e.g.,* Regulation 1142) in the context of describing the designation of areas for those standards, we have not identified any regulations that would expire or would no longer be effective for purposes of the 2008 ozone NAAQS. In short, EPA sees nothing in the SIP that indicates that the State does not have the ability to implement and enforce the 2008 ozone NAAQS. Although we do not believe that the failure of Regulation 1103 to specifically reference the 2008 ozone NAAQS renders the infrastructure SIP unapprovable, EPA notes that the State recently revised Regulation 1103 to expressly include that standard and submitted that regulation to EPA as a SIP revision dated February 17, 2014. EPA plans to act on that SIP submission shortly.

Comment 9: Sierra Club contends that EPA should not approve Delaware's 2008 eight-hour ozone infrastructure SIP revision until EPA and Delaware clarify what was intended by citing to two provisions of Delaware regulations in EPA's TSD for the NPR. First, Sierra Club comments that EPA cited to 7 DE Admin. Code 1137 to satisfy section 110(a)(2)(F) of the CAA. The commenter states it could not find 7 DE Admin. Code 1137 in the Delaware General Assembly: Delaware Regulations: Administrative Code: Title 7: 1000: 1100. Second, the commenter mentions that EPA cited in its TSD to 7 Del. C. Chapter 29 in discussing the requirements of section 110(a)(2)(J) of the CAA relating to public notification and states 7 Del. C. Chapter 29 is not relevant to the 2008 ozone NAAQS.

Response 9: EPA agrees with the commenter regarding the incorrect reference to these two provisions; however, EPA disagrees with the commenter that EPA cannot approve the Delaware infrastructure SIP submittal for 2008 ozone NAAQS. After reviewing Delaware's March 27, 2013 infrastructure SIP submittal and EPA's TSD reviewing that SIP submittal, EPA acknowledges that Delaware inadvertently included a citation to Delaware Regulation 1137 in its March 27, 2013 SIP submittal listing provisions meeting requirements in section 110(a)(2)(F) of the CAA, and EPA inadvertently also refers to Delaware Regulation 1137 when discussing in the TSD how Delaware met the requirements of section 110(a)(2)(F) of

[4] Delaware's five-year progress report calculated total SO_2 emissions from point sources using 2008 emissions inventory information supplemented with 2011 SO_2 emissions data for EGUs from EPA's CAMD to compare ''currently available'' data to projections for 2018 which were in Delaware's 2008 regional haze SIP submittal.

the CAA. Sierra Club correctly identified that there is no Delaware Regulation 1137. However, EPA believes this was merely a typographical mistake within a list of applicable regulations which do address Delaware's programs for monitoring and reporting in both Delaware's SIP submittal and in EPA's TSD. As mentioned in the TSD, Delaware has numerous regulations within its program and SIP for requiring installation and maintenance of monitoring equipment and periodic emissions reporting including 7 DE Admin. Codes 1112, 1123, 1124, 1126, 1131, 1139, 1140, 1141, 1142, and others in the approved Delaware SIP, which is identified at 40 CFR 52.420(c). EPA maintains these provisions appropriately support Delaware's ozone infrastructure SIP for section 110(a)(2)(F) for adequate provisions for monitoring and reporting. EPA's and Delaware's inadvertent inclusion of the reference to Regulation 1137 was merely a typographical mistake and immaterial to EPA's conclusion regarding approvability of the Delaware SIP submission.

Regarding Sierra Club's second comment, EPA acknowledges it inadvertently refers to 7 Del. C. Chapter 29 as an additional provision which satisfies section 110(a)(2)(J)'s requirements relating to public notification. EPA believes the remaining Delaware provision discussed in EPA's TSD for section 110(a)(2)(J) requirements related to public notice, 7 Del. C. Chapter 60, adequately supports that Delaware has met the requirements of section 110(a)(2)(J) of the CAA. 7 Del. C. Chapter 60 requires SIP revisions and new or amended regulations to undergo public notice and hearing, publication in newspapers and in the Delaware Register, and opportunity for comment by the public and local political subdivisions. Therefore, EPA believes it appropriately proposed that Delaware's March 27, 2013 infrastructure SIP submittal for the 2008 ozone NAAQS meets all requirements of section 110(a)(2)(F) and 110(a)(2)(J) of the CAA. EPA's inadvertent mention of 7 Del. C. Chapter 29 is immaterial to EPA's conclusion regarding approvability of the Delaware SIP submission.

IV. Final Action

EPA is approving Delaware's submittal which provides the basic program elements specified in sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, necessary to implement, maintain, and enforce the 2008 ozone NAAQS, as a revision to the Delaware SIP. This rulemaking action does not include approval of Delaware's submittal for section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA and will be addressed in a separate process. This rulemaking action also does not include approval of the portion of Delaware's submittal relating to section 110(a)(2)(D)(i)(I) which will be addressed in a separate rulemaking action.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 state law as meeting Federal requirements and 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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 2014. 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 pertaining to Delaware's section 110(a)(2) infrastructure elements for the 2008 ozone NAAQS 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, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: March 21, 2014.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart I— Delaware

■ 2. In § 52.420, the table in paragraph (e) is amended by adding an entry for Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS at the end of the table to read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	Statewide	3/27/13	4/3/14 [*Insert Federal Register page number where the document begins and date*].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2014–07459 Filed 4–2–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 246

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: *Effective* April 3, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6088; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION:

This final rule amends the DFARS as follows:

1. Correct typographical error at 246.710(1)(ii).

List of Subjects in 48 CFR Part 246

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 246 is amended as follows:

PART 246—QUALITY ASSURANCE

■ 1. The authority citation for 48 CFR part 246 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

246.710 [Amended]

■ 2. Section 246.710 paragraph (1)(ii) is amended by removing ''alternate'' and adding ''alternate I'' in its place.

[FR Doc. 2014–07398 Filed 4–2–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130925836–4174–02]

RIN 0648–XD215

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2014 total allowable catch of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 31, 2014, through 1200 hrs, A.l.t., May 31, 2014.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2014 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 3,636 metric tons (mt) as established by the final 2014 and 2015 harvest specifications for groundfish of the GOA (79 FR 12890, March 6, 2014).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2014 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,136 mt and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting