or petty officer who has been authorized by the Captain of the Port, Delaware Bay, to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations:* The general safety zone regulations found in 33 CFR part 165 subpart C apply to the safety zone created by this section.

(1) During periods of full channel closures, the main navigational channel will be obstructed and vessels will be unable to pass. Secondary bridge spans will be clear to pass; vessels able to pass under secondary channel spans may do so.

(2) Vessels wishing to transit the safety zone in the main navigational channel may do so if they can make satisfactory passing arrangements with the on-scene construction vessel in accordance with the Navigational Rules in 33 CFR Subchapter E. If vessels are unable to make satisfactory passing arrangements with the on-scene construction vessel, they may request permission from the COTP or his designated representative on VHF channel 16.

(3) There will be number of working days that the navigation channel will not be obstructed; however, mariners wishing to transit during the enforcement period must still comply with the procedures in paragraph (c)(2) of this section.

(4) The main channel will be clear from the hours of 6 p.m. to 7 a.m. daily, and every Sunday throughout the course of the project. Vessels may transit through the safety zone at these times without restriction.

(5) This section applies to all vessels wishing to transit through the safety zone except vessels that are engaged in the following operations: Enforcing laws; servicing aids to navigation, and emergency response vessels.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted by Federal, State, and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This rule will be enforced from 7 a.m. to 6 p.m. each day except Sundays, from October 5, 2015, to December 5, 2015, unless cancelled earlier by the Captain of the Port.

B.A. Cooper,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2015–25872 Filed 10–9–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0657; FRL–9935–18-Region 5]

Air Plan Approval; MI; Infrastructure SIP Requirements for the 2008 Ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of state implementation plan (SIP) submissions by Michigan regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone, 2010 nitrogen dioxide (NO_2), 2010 sulfur dioxide (SO_2), and 2012 fine particulate ($PM_{2.5}$) national ambient air quality standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the requirements of the CAA. The proposed rulemaking associated with this final action was published on June 24, 2015, and EPA received one comment letter during the comment period, which ended on July 24, 2015. The concerns raised in this letter, as well as EPA's responses, are addressed in this final action.

DATES: This final rule is effective on November 12, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2014–0657. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of these SIP submissions?

A. What does this rulemaking address?

This rulemaking addresses infrastructure SIP submissions from the Michigan Department of Environmental Quality (MDEQ) submitted on July 10, 2014, for the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS.

B. Why did the state make this SIP submission?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs already meet those requirements.

EPA has highlighted this statutory requirement in multiple guidance documents, including the most recent guidance document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and (2)'' issued on September 13, 2013.

C. What is the scope of this rulemaking?

EPA is acting upon Michigan's SIP submissions that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. The requirement for states to make SIP submissions of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The

statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

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

This rulemaking will not cover three substantive areas that are not integral to acting on the state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (''SSM'') at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that 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 (collectively referred to as ''director's discretion''); and, (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these substantive areas in separate rulemaking. A detailed rationale, history, and interpretation related to infrastructure SIP requirements can be found in our May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242–27245).

In addition, EPA is not acting on submissions related to a portion of section 110(a)(2)(D)(i)(II) with respect to visibility, section 110(a)(2)(J) with respect to visibility for the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS submittals, and section 110(a)(2)(D)(i)(I), interstate transport significant contribution and interference with maintenance for 2008 ozone, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS submittals. EPA is also not acting on submissions related to section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. The rationale for not acting on submittals regarding elements of these requirements was included in EPA's June 24, 2015, proposed rulemaking.

EPA's June 24, 2015, proposed rulemaking also proposed approving a submission from Michigan addressing the state board requirements under section 128 of the CAA. EPA finalized this approval in a separate rulemaking on August 3, 2015 (see 80 FR 52399).

II. What is our response to comments received on the proposed rulemaking?

The public comment period for EPA's proposed actions with respect to Michigan's satisfaction of the infrastructure SIP requirements for the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS closed on July 24, 2015. EPA received one comment letter, which pertained to the 2008 ozone NAAQS, submitted jointly by the Sierra Club and Earthjustice. A synopsis of the comments contained in this letter and EPA's responses are provided below.

Comment 1: 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) that requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which commenter claimed include the maintenance plan requirement. The commenter notes the CAA definition of ''emission limit'' and reads these provisions together to require ''enforceable emission limitations on source emissions sufficient to ensure maintenance of the NAAQS.''

Response 1: EPA disagrees that section 110 must be interpreted in the manner suggested by the commenter. Section 110 is only one provision that is part of the complex 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 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 must demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program.

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) specified that a section 110 plan must 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 for areas not meeting the NAAQS.

In 1990, many areas still had air quality that did not meet the NAAQS, and Congress again amended the CAA, adding yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182. 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).

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.

With regard to the requirement for emission limitations, EPA has interpreted this to mean that, for purposes of section 110, the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. As EPA stated in ''Guidance on Infrastructure State Implementation Plan (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.

Comment 2: The commenter cites two excerpts from the legislative history of the CAA Amendments of 1970 asserting that they support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show maintenance of the NAAQS in all areas of Michigan. The commenter also contends that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 2: 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 the commenter cites merely provide that states should include enforceable emission limits in their SIPs; 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.

Comment 3: The commenter cites to 40 CFR 51.112(a), providing that each 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 ISIPs.'' 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 3: 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). In addition, 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 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 PM (portion)''), 51.14 (''Control strategy: CO, HC, Ox 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 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

Comment 4: The commenter references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs, and claimed they were actions in which EPA relied on section 110(a)(2)(A) 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, EPA cited section 110(a)(2)(A) 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, the commenter cites a 2013 proposed disapproval of a revision to the SO_2 SIP for Indiana, where the revision attempted to remove 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 4: 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 now final 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 addressed a control strategy SIP and not an infrastructure SIP (71 FR 12623).

Similarly, the Indiana action also does not support for the commenter's position (78 FR 78720). 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 determined that the state had failed to demonstrate under section 110(l) of the CAA that the SIP revision would not result in increased SO_2 emissions and thus not 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 5: The commenter discusses several cases applying to the CAA which it claims support its contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent violations of the NAAQS and demonstrate maintenance throughout the area. The commenter 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.'' The commenter 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, 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 stated that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The commenter 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''). The commenter also cites *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 5: None of the cases the commenter cites supports the commenter's contention that section 110(a)(2)(A) requires that infrastructure SIPs 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) may reasonably be interpreted. With the exception of *Train,* 421 U.S. 60, none of the cases the commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, in the context of a challenge to an EPA action, 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 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,* a case that was decided almost 40 years ago, the court addressed 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 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) 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 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 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 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of its infrastructure SIPs. The language from the opinion which the commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). The commenters do not raise any concerns about whether the measures relied on by the state in the infrastructure SIP are ''emissions

limitations,'' thus, the decision in this case has no bearing here.

In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the court reviewed a Federal implementation plan that EPA promulgated after a long history of the state failing to submit an adequate SIP. The court cited generally to sections 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 suggests 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 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 court's statement that ''SIPs must include certain measures Congress specified'' but that statement specifically referenced the requirement in section 110(a)(2)(C), 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 the commenter cites, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret the provision of CAA section 110(l) 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 courts cited to section 110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

Comment 6: The commenter contends that EPA cannot approve the section 110(a)(2)(A) portion of Michigan's 2008 ozone infrastructure SIP revision because an infrastructure SIP should include enforceable emission limits to prevent NAAQS violations in areas not designated nonattainment. Specifically, the commenter cited air monitoring reports for Allegan, Berrien, and Muskegon Counties indicating violations of the NAAQS based on 2010–2012, 2011–2013, and 2012–2014 design values. The commenter alleges that these violations demonstrate that the infrastructure SIP fails to ensure that air pollution levels meet or are below the level of the NAAQS and thus the infrastructure SIP must be disapproved. The commenter noted that the design values for the monitors in Allegan and Muskegon Counties have exceeded the 2008 ozone standard for every three year period since 2001–2003, with the exception of 2008–2010. The commenter also notes that the EPA denied the Sierra Club's petition to redesignate all areas violating the 2008 ozone standard based on 2012 data. The commenter contends that, as a result of the denial of the petition, the areas mentioned above do not have any requirements associated with nonattainment areas.

Furthermore, the commenter suggests that there are available controls for the state to adopt for reducing NO_X, a precursor to ozone. The commenter also contends that EPA should have conducted an analysis to determine whether the SIP revision would interfere with any applicable requirement concerning attainment, as required by CAA section 110(l).

Response 6: We disagree with the commenter 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 SIP was due and submitted changes the status of areas within the state. We believe 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 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.

The suggestion that the infrastructure SIP must include measures addressing violations of the standard that did not occur until shortly before or even 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. 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) and provisions in section 110(k)(5) allowing EPA to call on a state to revise its SIP, as appropriate.

We do not believe that section 110(a)(2)(A) 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 the state has available for developing the infrastructure SIP, it does not know what the designation will be for individual areas of the state.[1] 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.

For all of the above reasons, we disagree 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 when EPA is acting on a submittal is whether the state has met the basic structural SIP requirements.

Moreover, Michigan's SIP contains existing emission reduction measures that control emissions of VOCs and NO_X found in Michigan Administrative Code sections R 336.1601 through R 336.1661 and R 336.1701 through R 336.1710 for VOCs and sections R 336.1801 through R 336.1834 for NO_X. Michigan's SIP revision reflects several provisions that can lead to reductions in ground level ozone and its precursors. The Michigan 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 Michigan 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.

The commenters assertion that CAA section 110(l) requirements should

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

apply are incorrect, because the infrastructure SIP does not approve any new rules or rule modifications and therefore by itself does not have any effect on emissions of the relevant pollutants. Rather, approving Michigan's infrastructure SIP revision is simply affirming that Michigan has sufficient authority to take the types of actions required by the CAA in order to bring such areas back into attainment and implement the current NAAQS. The commenter has not provided any information to demonstrate that emissions will be affected by the infrastructure SIP submission.

The denial of the redesignation petition also is not relevant to Michigan's infrastructure SIP because as mentioned above, the designation process and infrastructure submittals are separable actions on completely different timelines and infrastructure requirements are the same regardless of the designation status of the area.

III. What action is EPA taking?

For the reasons discussed in our June 24, 2015, proposed rulemaking and the responses to comments, above, EPA is taking final action to approve Michigan's infrastructure SIP for the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS as proposed.[2] In the June 24, 2015, rulemaking, EPA also proposed approval for Michigan's CAA section 128 submittal. EPA finalized this approval in separate rulemaking on August 3, 2015 (see 80 FR 52399). Our final actions, by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Ozone	2010 NO_2	2010 SO_2	2012 $PM_{2.5}$
(A)—Emission limits and other control measures	A	A	A	A
(B)—Ambient air quality monitoring/data system	A	A	A	A
(C)1—Program for enforcement of control measures	A	A	A	A
(C)2—PSD	A	A	A	A
(D)1—I Prong 1: Interstate transport—significant contribution	NA	A	NA	NA
(D)2—I Prong 2: Interstate transport—interfere with maintenance	NA	A	NA	NA
(D)3—II Prong 3: Interstate transport—prevention of significant deterioration	A	A	A	A
(D)4—II Prong 4: Interstate transport—protect visibility	NA	NA	NA	NA
(D)5—Interstate and international pollution abatement	A	A	A	A
(E)1—Adequate resources	A	A	A	A
(E)2—State board requirements	A	A	A	A
(F)—Stationary source monitoring system	A	A	A	A
(G)—Emergency power	A	A	A	A
(H)—Future SIP revisions	A	A	A	A
(I)—Nonattainment planning requirements of part D	+	+	+	+
(J)1—Consultation with government officials	A	A	A	A
(J)2—Public notification	A	A	A	A
(J)3—PSD	A	A	A	A
(J)4—Visibility protection	+	+	+	+
(K)—Air quality modeling/data	A	A	A	A
(L)—Permitting fees	A	A	A	A
(M)—Consultation and participation by affected local entities	A	A	A	A

In the above table, the key is as follows:

A	Approve.
NA	No Action/Separate Rulemaking.
+	Not Germaine to Infrastructure.

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 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose

[2] As stated previously, EPA will take later, separate action on portions of Michigan's 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ infrastructure SIP submittals including the portions of the SIP submittals addressing the visibility portions of section 110(a)(2)(D)(i)(II) and section 110(a)(2)(D)(i)(I) for the 2008 ozone, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS submittals.

substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 14, 2015. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 23, 2015.

Susan Hedman,

Regional Administrator, Region 5.

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.*

■ 2. In § 52.1170, the table in paragraph (e) is amended by adding entries at the end of the table for ''Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS,'' ''Section 110(a)(2) Infrastructure Requirements for the 2010 nitrogen dioxide (NO_2) NAAQS,'' ''Section 110(a)(2) Infrastructure Requirements for the 2008 sulfur dioxide (SO_2) NAAQS,'' and ''Section 110(a)(2) Infrastructure Requirements for the 2012 particulate matter ($PM_{2.5}$) NAAQS'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS.	Statewide	7/10/2014	10/13/2015, [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on (D)(i)(I) and the visibility portion of (D)(i)(II).
Section 110(a)(2) Infrastructure Requirements for the 2010 nitrogen dioxide (NO_2) NAAQS.	Statewide	7/10/2014	10/13/2015, [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on the visibility portion of (D)(i)(II).
Section 110(a)(2) Infrastructure Requirements for the 2008 sulfur dioxide (SO_2) NAAQS.	Statewide	7/10/2014	10/13/2015, [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on (D)(i)(I) and the visibility portion of (D)(i)(II).
Section 110(a)(2) Infrastructure Requirements for the 2012 particulate matter ($PM_{2.5}$) NAAQS.	Statewide	7/10/2014	10/13/2015, [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on (D)(i)(I) and the visibility portion of (D)(i)(II).

[FR Doc. 2015–25839 Filed 10–9–15; 8:45 am]

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NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

[Docket No. NTSB–AS–2015–0001]

Interpretation of Notification Requirements To Exclude Model Aircraft; Correction

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice of interpretation; correction.

SUMMARY: The NTSB published a notice of legal interpretation in the **Federal Register** on September 11, 2015 (80 FR 54736), titled: ''Interpretation of Notification Requirements to Exclude Model Aircraft.'' The document contained an inadvertent typographical error. This document corrects the error.

DATES: This correction is effective October 13, 2015.

FOR FURTHER INFORMATION CONTACT: David Tochen, NTSB General Counsel, at (202) 314–6080.

SUPPLEMENTARY INFORMATION:

Correction

The Notice of Legal Interpretation that was the subject of FR Doc. 2015–22933, published on September 11, 2015 (80 FR 54736), is corrected as follows: On page 54736, in the second column, first paragraph, line 17, is amended by changing the word ''incidence'' to ''incidents.''

David K. Tochen,

General Counsel.

[FR Doc. 2015–26015 Filed 10–9–15; 8:45 am]

BILLING CODE 7533–01–P