ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0522; FRL–9923–79–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Infrastructure Requirements for the 2010 Sulfur Dioxide 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 Commonwealth of Virginia 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 implementation, maintenance, and enforcement of the NAAQS. These elements are referred to as infrastructure requirements. The Commonwealth of Virginia made a submittal addressing the infrastructure requirements for the 2010 sulfur dioxide (SO_2) primary NAAQS.

DATES: This final rule is effective on April 3, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0522. 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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

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SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On June 22, 2010 (75 FR 35520), EPA promulgated a 1-hour primary SO_2 NAAQS at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. The new NAAQS is codified at 40 CFR 50.17, while the prior NAAQS are at 40 CFR 50.4. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe.

On June 18, 2014, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), 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 2010 SO_2 NAAQS. On August 22, 2014 (79 FR 49731), EPA published a notice of proposed rulemaking (NPR) for Virginia proposing approval of the submittal. In the NPR, EPA proposed approval of the following infrastructure elements: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J) (consultation, public notification, and prevention of significant deterioration), (K), (L), and (M).

Virginia did not submit section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) and will be addressed in a separate process. At this time, EPA is not taking action on section 110(a)(2)(D)(i)(II) or (J) for visibility protection for the 2010 SO_2 NAAQS as explained in the NPR. Although Virginia's infrastructure SIP submittal for the 2010 SO_2 NAAQS referred to Virginia's regional haze SIP for section 110(a)(2)(D)(i)(II) and (J) for visibility protection, EPA intends to take later, separate action on Virginia's submittal for these elements as explained in the NPR and the Technical Support Document (TSD) which accompanied the NPR. This rulemaking action also does not include action on section 110(a)(2)(D)(i)(I) of the CAA because Virginia's June 18, 2014 infrastructure SIP submittal did not include provisions for this element; therefore EPA will take later, separate action on section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS for Virginia as explained in the NPR. Finally, EPA will also take later, separate action with respect to Section 110(a)(2)(E)(ii) regarding CAA section 128 requirements for State Boards for the 2010 SO_2 NAAQS as explained in the NPR.

The rationale supporting EPA's proposed rulemaking action, including the scope of infrastructure SIPs in general, is explained in the published NPR and the TSD accompanying the NPR and will not be restated here. The NPR and TSD are available in the docket for this rulemaking at *www.regulations.gov*, Docket ID Number EPA–R03–OAR–2014–0522. The discussion below in responding to comments on the NPR provides additional rationale to the extent necessary and appropriate to provide such responses and support the final action.

II. Public Comments and EPA's Responses

EPA received comments from the Sierra Club on the August 22, 2014 proposed rulemaking action on Virginia's 2010 SO_2 infrastructure SIP. A full set of these comments is provided in the docket for today's final rulemaking action.

A. Background Comments

1. The Plain Language of the CAA

Comment 1: Sierra Club contends in background comments that the plain language of section 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 of enforceable emission limits in an infrastructure SIP to prevent NAAQS exceedances in areas not designated nonattainment. Sierra Club then contends that the Virginia 2010 SO_2 infrastructure SIP revision did not revise the existing SO_2 emission limits in response to the 2010 SO_2 NAAQS and fails to comport with asserted CAA requirements for SIPs to establish enforceable emission limits that are adequate to prohibit NAAQS exceedances in areas not designated nonattainment.

The Commenter states that the main objective of the infrastructure SIP process "is to ensure that all areas of the country meet the NAAQS," and that nonattainment areas are addressed through nonattainment SIPs. The Commenter asserts the NAAQS are the foundation for specific emission limitations for most large stationary sources, such as coal-fired power plants.

Further, in 2012, EPA granted limited approval of Virginia's regional haze SIP which also includes emission measures related to SO_2. 77 FR 35287 (June 13, 2012). As discussed in the TSD for this rulemaking, EPA finds the provisions for SO_2 emission limitations and measures adequately address section 110(a)(2)(A) to aid in attaining and/or maintaining the NAAQS and finds Virginia demonstrated that it has the necessary tools to implement and enforce the NAAQS.

2. The Legislative History of the CAA

Comment 2: Sierra Club cites two excerpts from the legislative history of the 1970 CAA claiming 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 Virginia. Sierra Club 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: 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. *See also* 79 FR at 17046 (responding to comments on Virginia's ozone infrastructure SIP). In any event, the two excerpts of legislative history the Commenter cites 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. As provided in response to another comment in this rulemaking, the TSD for the proposed rule explains why the Virginia SIP includes enforceable emissions limitations for SO_2 for the relevant area.

3. Case Law

Comment 3: 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) requires enforceable emissions limits in infrastructure SIPs to prevent exceedances 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 to *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 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 specifies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State"); *Conn. Fund for Env't, Inc.* v. *EPA*, 696 F.2d 169, 172 (D.C. Cir. 1982) (CAA requires SIPs to contain "measures necessary to ensure attainment and maintenance of NAAQS"). Finally, Sierra Club 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 3: None of the cases Sierra Club cites support its 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) may reasonably be interpreted. With the exception of *Train*, 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, the courts reference section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background sections of decisions in the context of a challenge to an EPA action on revisions to a SIP that was required and approved as meeting other provisions of the CAA or in the context of an enforcement action.

In *Train*, 421 U.S. 60, the 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 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

at electric generating units (EGUs) aimed at reducing interstate impacts on ozone and particulate matter concentrations in downwind states. In August 2011, EPA issued the Cross-State Air Pollution Rule (CSAPR) to replace CAIR, which had been remanded by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). *See North Carolina* v. *EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). *See also* 76 FR 48208 (August 8, 2011) (promulgation of CSAPR). New litigation commenced in the D.C. Circuit concerning CSAPR during which the D.C. Circuit initially vacated CSAPR in *EME Homer City Generation, L.P.* v. *EPA*, 696 F.3d 7 (D.C. Cir. 2012), cert. granted 133 U.S. 2857 (2013) and ordered continued implementation of CAIR. However, the United States Supreme Court vacated that decision and remanded CSAPR to the D.C. Circuit for further proceedings. *EPA* v. *EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). After the Supreme Court's decision, EPA filed a motion to lift the stay of CSAPR and asked the D.C. Circuit to toll CSAPR's compliance deadlines by three years. On October 23, 2014, after EPA proposed to approve Virginia's SO_2 infrastructure SIP, the D.C. Circuit granted EPA's motion and lifted the stay on CSAPR. *EME Homer City Generation, L.P.* v. *EPA*, No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3. EPA views the D.C. Circuit's October 23, 2014 Order as also granting EPA's request to toll CSAPR's compliance deadlines and will therefore commence implementation of CSAPR on January 1, 2015. 79 FR 71663 (December 3, 2014) (interim final rule revising CSAPR compliance deadlines). Therefore, EPA began implementing CSAPR on January 1, 2015 and ceased implementing CAIR on December 31, 2014 because CSAPR replaced CAIR. Virginia EGU's will continue to be subject to a cap-and-trade program for reducing SO_2 emissions which will preserve reductions at such EGUs achieved through CAIR; however, this program will be CSAPR, implemented as a FIP by EPA, until such time as Virginia adds the provisions of CSAPR to its SIP. CSAPR requires substantial reductions of SO_2 and NO_X emissions from EGUs in 28 states in the Eastern United States that significantly contribute to downwind nonattainment or interfere with maintenance of the 1997 fine particulate matter ($PM_{2.5}$) and ozone NAAQS and 2006 $PM_{2.5}$ NAAQS.

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, 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 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

5. EPA Interpretations in Other Rulemakings

Comment 5: Sierra Club also 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 SO_2 NAAQS. In that action, EPA cited section 110(a)(2)(A) 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 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. *See* 78 FR 17157, 17158, (March 20, 2013) (proposed rule on Indiana SO_2 SIP) and 78 FR 78720, 78721 (December 27, 2013) (final rule on Indiana SO_2 SIP). In its proposed disapproval, 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 5: EPA does not agree that the two prior actions referenced by Sierra Club establish how EPA reviews infrastructure SIPs. It is clear from both the final Missouri rule and the proposed and 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 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. 78 FR 78720. The review in that rule was of a completely different requirement than the section 110(a)(2)(A) SIP. Rather, in that case, the State had an approved SO_2 attainment plan and was seeking to remove provisions from the SIP that it 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. *See* 78 FR 17157. Nothing in that proposed or final 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.

As discussed in detail in the TSD and NPR, EPA finds the Virginia SIP meets the appropriate and relevant structural requirements of section 110(a)(2) of the CAA that will aid in attaining and/or maintaining the NAAQS and that the Commonwealth demonstrated that it has the necessary tools to implement and enforce a NAAQS. Therefore, EPA approves the Virginia SO_2 infrastructure SIP.[6]

B. Comments on Virginia SIP SO_2 Emission Limits

Comment 6: Citing section 110(a)(2)(A) of the CAA, Sierra Club contends that EPA may not approve the proposed infrastructure SIP because it does not include enforceable 1-hour SO_2 emission limits for sources currently allowed to cause "NAAQS exceedances." Sierra Club asserts the proposed infrastructure SIP fails to include enforceable 1-hour SO_2 emissions limits or other required measures to ensure attainment and maintenance of the SO_2 NAAQS in areas not designated nonattainment as Sierra Club claims is required by section 110(a)(2)(A). Sierra Club asserts an infrastructure SIP must ensure, through state-wide regulations or source specific requirements, proper mass limitations and short term averaging on specific large sources of pollutants such as power plants. Sierra Club asserts that emission limits are especially important for meeting the 1-hour SO_2 NAAQS because SO_2 impacts are strongly source-oriented. Sierra Club states coal-fired electric generating units (EGUs) are large contributors to SO_2 emissions but contends Virginia did not demonstrate that emissions allowed by the proposed infrastructure SIP from such large sources of SO_2 will ensure compliance with the 2010 1-hour SO_2 NAAQS. The Commenter claims the proposed infrastructure SIP would allow major sources to continue operating with present emission limits.[7] Sierra Club then refers to air dispersion modeling it conducted for two coal-fired EGUs in Virginia, Chesapeake Energy Center and Yorktown Power Station. Sierra Club asserts the results of the air dispersion modeling it conducted employing EPA's AERMOD program for modeling used the plants' allowable and maximum emissions and showed the plants could cause exceedances of the 2010 SO_2 NAAQS with either allowable or maximum emissions.[8] Based on the modeling, Sierra Club asserts the Virginia SO_2 infrastructure SIP submittal authorizes the two EGUs to cause exceedances of the NAAQS with allowable and maximum emission rates and therefore the infrastructure SIP fails to include adequate enforceable emission limitations or other required measures for sources of SO_2 sufficient to ensure attainment and maintenance of the 2010 SO_2 NAAQS. Sierra Club cites to information from the owner of Chesapeake Energy Center and Yorktown Power Station regarding the retirement of certain units at those plants in 2015 and 2016 and asserts such planned retirements should be incorporated into the Virginia infrastructure SIP as necessary to ensure attainment and maintenance of the NAAQS. Sierra Club therefore asserts EPA must disapprove Virginia's proposed SIP revision. In addition, Sierra Club asserts "EPA must impose additional emission limits on the plants

[6] As stated previously, EPA will take later, separate action on several portions of Virginia's SO_2 infrastructure SIP submittal including the portions of the SIP submittal addressing section 110(a)(2)(D)(i)(II) and (J) (both for visibility protection) and 110(a)(2)(E)(ii) for State Boards.

[7] Sierra Club provides a chart in its comments claiming 65 percent of SO_2 emissions in Virginia are from coal-fired power plants based on 2011 data.

[8] Sierra Club asserts its modeling followed protocols pursuant to 40 CFR part 50, Appendix W and EPA's 2005 Guideline on Air Quality Models.

TSD. These provisions have the ability to reduce SO_2 overall. Although the Virginia SIP relies on measures and programs used to implement previous SO_2 NAAQS, these provisions are not limited to reducing SO_2 levels to meet one specific NAAQS and will continue to provide benefits for the 2010 SO_2 NAAQS.

Additionally, as discussed in EPA's TSD supporting the NPR, Virginia has the ability to revise its SIP when necessary (*e.g.* in the event the Administrator finds the plan to be substantially inadequate to attain the NAAQS or otherwise meet all applicable CAA requirements) as required under element H of section 110(a)(2). *See* Code of Virginia 10.1–1308 (authorizing Virginia's Air Pollution Control Board to promulgate regulations to abate, control, and prohibit air pollution throughout the Commonwealth).

EPA believes the requirements for emission reduction measures for an area designated nonattainment for the 2010 primary SO_2 NAAQS are in sections 172 and 191–192 of the CAA, and therefore, the appropriate avenue for implementing requirements for necessary emission limitations for demonstrating attainment with the 2010 SO_2 NAAQS is through the attainment planning process contemplated by those sections of the CAA. On August 5, 2013, EPA designated as nonattainment most areas in locations where existing monitoring data from 2009–2011 indicated violations of the 1-hour SO_2 standard. 78 FR 47191. At that time, no areas in Virginia had monitoring data from 2009–2011 indicating violations of the 1-hour SO_2 standard, and thus no areas were designated nonattainment in Virginia. In separate future actions, EPA intends to address the designations for all other areas for which EPA has yet to issue designations. *See, e.g.*, 79 FR 27446 (May 13, 2014) (proposing process and timetables by which state air agencies would characterize air quality around SO_2 sources through ambient monitoring and/or air quality modeling techniques and submit such data to the EPA). Although no areas within Virginia have yet been designated nonattainment, any future nonattainment designations under the 2010 SO_2 NAAQS within the Commonwealth will set appropriate due dates for any applicable attainment SIPs required pursuant to CAA sections 172, 191, and 192. EPA believes it is not appropriate to bypass the attainment planning process by imposing separate attainment planning process requirements outside the attainment planning process and into the infrastructure SIP process. Such actions would be disruptive and premature absent exceptional circumstances and would interfere with a state's planning process. *See In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petitions Numbers III–2012–06, III–2012–07, and III2013–01 (July 30, 2014) (hereafter, *Homer City/Mansfield Order*) at 10–19 (finding Pennsylvania SIP did not require imposition of SO_2 emission limits on sources independent of the part D attainment planning process contemplated by the CAA). EPA believes that the history of the CAA, and intent of Congress for the CAA as described above, demonstrate clearly that it is within the section 172 and general part D attainment planning process that Virginia must include additional SO_2 emission limits on sources in order to demonstrate future attainment, where needed, for any areas in Virginia or other states that may be designated nonattainment in the future, in order to reach attainment with the 2010 1-hour SO_2 NAAQS.

The Commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits adequate to provide for timely attainment and maintenance of the standard is also not supported. As explained previously in response to the background comments, EPA notes this regulatory provision clearly on its face applies to plans specifically designed to attain the NAAQS and not to infrastructure SIPs which show the states have in place structural requirements necessary to implement the NAAQS. Therefore, EPA finds 40 CFR 51.112 inapplicable to its analysis of the Virginia SO_2 infrastructure SIP.

As noted in EPA's preamble for the 2010 SO_2 NAAQS, determining compliance with the SO_2 NAAQS will likely be a source-driven analysis, and EPA has explored options to ensure that the SO_2 designations and implementation processes realistically account for anticipated SO_2 reductions at sources that we expect will be achieved by current and pending national and regional rules. *See* 75 FR 35520. As mentioned previously above, EPA has proposed a process to address additional areas in states which may be found to not be attaining the 2010 SO_2 NAAQS. 79 FR 27446 (proposing process for further monitoring or modeling of areas with larger SO_2 sources). In addition, in response to lawsuits in district courts seeking to compel EPA's remaining designations of undesignated areas under the NAAQS, EPA has proposed to enter a settlement under which this process would require an earlier round of designations focusing on areas with larger sources of SO_2 emissions, as well as enforceable deadlines for the later rounds of designations.[10] However, because the purpose of an infrastructure SIP submission is for more general planning purposes, EPA does not believe Virginia is obligated to account for controlled SO_2 levels at individual sources during this infrastructure SIP planning process. *See Homer City/Mansfield Order* at 10–19.

Regarding the air dispersion modeling conducted by Sierra Club pursuant to AERMOD for the coal-fired EGUs including Chesapeake Energy Center and Yorktown Power Station, EPA is not at this stage prepared to opine on whether the modeling demonstrates violations of the NAAQS, and does not find the modeling information relevant for review of an infrastructure SIP. EPA has issued non-binding guidance for states to use in conducting, if they choose, additional analysis to support designations for the 2010 SO_2 NAAQS. *SO_2 NAAQS Designations Modeling Technical Assistance Document*, EPA Office of Air and Radiation and Office of Air Quality Planning and Standards, December 2013, available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html*. Sierra Club's AERMOD modeling for the Virginia EGUs was conducted prior to the issuance of this guidance and may not address all recommended elements EPA may consider important to modeling for the 2010 SO_2 NAAQS for designations purposes. If any areas in Virginia are designated nonattainment in the future, any potential future modeling in attainment demonstrations by the Commonwealth would need to account for any new emissions limitations Virginia develops to support such demonstration, which at this point are unknown. Therefore, it is premature at this point to evaluate whether current modeled allowable SO_2 levels would be sufficient to show future attainment of the NAAQS. In addition, while EPA has extensively discussed the use of modeling for attainment demonstration purposes and for designations, EPA has recommended that such modeling was not needed for the SO_2 infrastructure SIPs needed for the 2010 SO_2 NAAQS. *See* April 12, 2012 letters to states and 2012 Draft White Paper. In contrast, EPA recently discussed modeling for designations in our May 14, 2014 proposal at 79 FR 27446 and for nonattainment planning in the April 23,

[10] These lawsuits have not yet been fully resolved, as of the date of this final action.

However, after conducting extensive stakeholder outreach and receiving comments from the states regarding these initial statements and the timeline for implementing the NAAQS, EPA subsequently stated in the April 12, 2012 letters and in the 2012 Draft White Paper that EPA was clarifying its implementation position and was no longer recommending such attainment demonstrations supported by air dispersion modeling for unclassifiable areas (which had not yet been designated) for the June 2013 infrastructure SIPs. EPA then reaffirmed this position in the February 6, 2013 memorandum, "Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard." [13] As previously mentioned, EPA had stated in the preamble to the NAAQS and in the prior 2011 draft guidance that EPA intended to develop and seek public comment on guidance for modeling and development of SIPs for sections 110, 172 and 191–192 of the CAA. After receiving such further comment, EPA has now issued guidance for the nonattainment area SIPs due pursuant to sections 172 and 191–192 and proposed a process for further characterization of areas with larger SO_2 sources, which could include use of air dispersion modeling. *See* April 23, 2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions* and 79 FR 27446 (proposing process and timetables for gathering additional information on impacts from larger SO_2 sources informed through ambient monitoring and/or air quality modeling). While the EPA guidance for attainment SIPs and the proposed process for further characterizing SO_2 emissions from larger sources both discuss the use air dispersion modeling, EPA's 2013 Infrastructure SIP Guidance did not suggest that states use air dispersion modeling to inform emission limitations for section 110(a)(2)(A) to ensure no exceedances of the NAAQS when sources are modeled. Therefore, as discussed previously, EPA believes the Virginia SO_2 infrastructure SIP submittal contains the structural requirements to address elements in section 110(a)(2) as discussed in detail in the TSD accompanying the proposed approval. EPA believes infrastructure SIPs are general planning SIPs to ensure that a state has adequate resources and authority to implement a NAAQS. Infrastructure SIP submissions are not intended to act or fulfill the obligations of a detailed attainment and/or maintenance plan for each individual area of the state that is not attaining the NAAQS. While infrastructure SIPs must address modeling authorities in general for section 110(a)(2)(K), EPA believes 110(a)(2)(K) requires infrastructure SIPs to provide the state's authority for air quality modeling and for submission of modeling data to EPA, not specific air dispersion modeling for large stationary sources of pollutants. In the TSD for this rulemaking action, EPA provided a detailed explanation of Virginia's ability and authority to conduct air quality modeling when required and its authority to submit modeling data to the EPA.

EPA finds Sierra Club's discussion of case law, guidance, and EPA staff statements regarding advantages of AERMOD as an air dispersion model to be irrelevant to the analysis of Virginia's infrastructure SIP as this is not an attainment SIP required to demonstrate attainment of the NAAQS pursuant to sections 172 or 192. In addition, Sierra Club's comments relating to EPA's use of AERMOD or modeling in general in designations pursuant to section 107, including its citation to *Catawba County*, are likewise irrelevant as EPA's present approval of Virginia's infrastructure SIP is unrelated to the section 107 designations process. Nor is EPA's action on this infrastructure SIP related to any new source review (NSR) or PSD permit program issue. As outlined in the August 23, 2010 clarification memo, "Applicability of Appendix W Modeling Guidance for the 1-hour SO_2 National Ambient Air Quality Standard" (U.S. EPA, 2010a), AERMOD is the preferred model for single source modeling to address the 1-hour SO_2 NAAQS as part of the NSR/PSD permit programs. Therefore, as attainment SIPs, designations, and NSR/PSD actions are outside the scope of a required infrastructure SIP for the 2010 SO_2 NAAQS for section 110(a), EPA provides no further response to the Commenter's discussion of air dispersion modeling for these applications. If Sierra Club resubmits its air dispersion modeling for the Virginia EGUs, or updated modeling information in the appropriate context, EPA will address the resubmitted modeling or updated modeling in the appropriate future context when an analysis of whether Virginia's emissions limits are adequate to show attainment and maintenance of the NAAQS is warranted.

The Commenter correctly noted that the Third Circuit upheld EPA's Section 126 Order imposing SO_2 emissions limitations on an EGU pursuant to CAA section 126. *GenOn REMA, LLC* v. *EPA*, 722 F.3d 513. Pursuant to section 126, any state or political subdivision may petition EPA for a finding that any major source or group of stationary sources emits, or would emit, any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i)(I) which relates to significant contributions to nonattainment or maintenance in another state. The Third Circuit upheld EPA's authority under section 126 and found EPA's actions neither arbitrary nor capricious after reviewing EPA's supporting docket which included air dispersion modeling as well as ambient air monitoring data showing violations of the NAAQS. The Commenter appears to have cited to this matter to demonstrate EPA's use of modeling for certain aspects of the CAA. EPA agrees with the Commenter regarding the appropriate role air dispersion modeling has for SO_2 NAAQS designations, attainment SIPs, and demonstrating significant contributions to interstate transport. However, EPA's approval of Virginia's infrastructure SIP is based on our determination that Virginia has the required structural requirements pursuant to section 110(a)(2) in accordance with our explanation of the intent for infrastructure SIPs as discussed in the 2013 Infrastructure SIP Guidance. Therefore, while air dispersion modeling may be appropriate for consideration in certain circumstances, EPA does not find air dispersion modeling demonstrating no exceedances of the NAAQS to be a required element before approval of infrastructure SIPs for section 110(a) or specifically for 110(a)(2)(A). Thus, EPA disagrees with the Commenter that EPA must require additional emission limitations in the Virginia SO_2 infrastructure SIP informed by air dispersion modeling and demonstrating attainment and maintenance of the 2010 NAAQS.

In its comments, Sierra Club relies on *Motor Vehicle Mfrs. Ass'n* and *NRDC* v. *EPA* to support its comments that EPA *must* consider the Sierra Club's modeling data on the Chesapeake Energy Center and Yorktown Power Station based on administrative law principles regarding consideration of comments provided during a rulemaking process. EPA asserts that it has considered the modeling submitted by the Commenter as well as all the submitted comments of Sierra Club. As discussed in detail in the Responses above, however, EPA does not believe the infrastructure SIPs required by

[13] The February 6, 2013 "Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard," one of the April 12, 2012 state letters, and the May 2012 *Draft White Paper* are available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.*

likewise not relevant to the analysis of infrastructure SIP requirements.

EPA has explained in the TSD supporting this rulemaking action how the Virginia SIP meets requirements in section 110(a)(2)(F) related to monitoring. 9 VAC 5–40–100 requires sources in Virginia to install, maintain, and replace equipment such as CEMS to continuously monitor SO_2 emissions where necessary and required. Further, 9 VAC 5–40 requires sources in Virginia to report information, such as periodic reports on the nature and amounts of emissions and emissions-related data, from owners or operators of stationary sources of SO_2 emissions through permits and compliance orders. Pursuant to 40 CFR part 51, subpart A, "Air Emissions Reporting Requirements," Virginia provides source-specific emissions data to EPA. Thus, EPA finds Virginia has the authority and responsibility to monitor air quality for the relevant NAAQS pollutants at appropriate locations and to submit data to EPA in a timely manner in accordance with 110(a)(2)(F) and the Infrastructure SIP Guidance.[18] *See* Infrastructure SIP Guidance at p. 45–46.

Comment 9: Sierra Club states that enforceable emission limits in SIPs or permits are necessary to avoid nonattainment designations in areas where modeling or monitoring shows SO_2 levels exceed the 1-hour SO_2 NAAQS and cites to a February 6, 2013 EPA document, *Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard*, which Sierra Club contends discusses how states could avoid future nonattainment designations. The Commenter asserts EPA should add enforceable emission limits to the Virginia infrastructure SIP to prevent future nonattainment designations and to protect public health. The Commenter claims the modeling it conducted for Chesapeake Energy Center and Yorktown Power Station indicates fourteen counties/independent cities in Virginia are at risk for being designated nonattainment with the 2010 SO_2 NAAQS without such enforceable SO_2 limits. The Commenter states EPA must ensure large sources cannot cause exceedances of the 2010 SO_2 NAAQS to comply with section 110(a)(2)(A) and to avoid future nonattainment designations. The Commenter asserts nonattainment designations create rigorous CAA requirements which could be avoided if states adopt and EPA approves such SO_2 emission limitations. In addition, the Commenter asserts adding SO_2 emission limitations on certain sources now would bring regulatory certainty for coal-fired EGUs and ultimately save such entities money as the sources could plan now for compliance with emission limits as well as with other CAA requirements such as the Mercury Air Toxic Standards, transport rules, and regional haze requirements. In summary, the Commenter asserts EPA must disapprove the Virginia infrastructure SIP and establish enforceable emission limits to ensure large sources of SO_2 do not cause exceedances of the 2010 SO_2 NAAQS, which would avoid nonattainment designations and bring "regulatory certainty" to sources in Virginia.

Response 9: EPA appreciates the Commenter's concern with avoiding nonattainment designations in Virginia for the 2010 SO_2 NAAQS and with providing coal-fired EGUs regulatory certainty to help them make informed decisions on how to comply with CAA requirements. However, Congress designed the CAA such that states have the primary responsibility for achieving and maintaining the NAAQS within their geographic area by submitting SIPs which will specify the details of how the state will meet the NAAQS. Pursuant to section 107(d), the states make initial recommendations of designations for areas within each state and EPA then promulgates the designations after considering the state's submission and other information. EPA promulgated initial designations for the 2010 SO_2 NAAQS in August 2013. EPA proposed on May 14, 2014 an additional process for gathering further SO_2 emissions source information for implementing the 2010 SO_2 NAAQS. 79 FR 27446. EPA has also proposed to enter a settlement to resolve deadline suits regarding the remaining designations that would, if entered by the court, impose deadlines for three more rounds of designations. Under these proposed schemes, Virginia would have the initial opportunity for proposing additional areas for designations for the 2010 SO_2 NAAQS. While EPA appreciates Sierra Club's comments, further designations will occur pursuant to the section 107(d) process, and in accordance with any applicable future court orders addressing the designations deadline suits and, if promulgated, future EPA rules addressing additional monitoring or modeling to be conducted by states. Virginia may, on its own accord, decide to impose additional SO_2 emission limitations to avoid future designations to nonattainment. If Virginia areas are designated nonattainment, Virginia will have the initial opportunity to develop additional emissions limitations needed to attain the NAAQS in the future, and EPA would be charged with reviewing whether those are adequate. If EPA were to disapprove the limits, then it would fall to EPA to adopt limits in a FIP. However, such considerations are not required of Virginia to consider at the infrastructure SIP stage of NAAQS implementation, as this action relates to our approval of Virginia's SO_2 infrastructure SIP submittal pursuant to section 110(a) of the CAA, and Sierra Club's comments regarding designations under section 107 are neither relevant nor germane to EPA's approval of Virginia's SO_2 infrastructure SIP. Likewise, while EPA appreciates Sierra Club's concern for providing "regulatory certainty" for coal-fired EGUs in Virginia, such concerns for regulatory certainty are not requirements for infrastructure SIPs as outlined by Congress in section 110(a)(2) nor as discussed in EPA's Infrastructure SIP Guidance. *See Commonwealth of Virginia, et al.*, v. *EPA*, 108 F.3d 1397, 1410 (D.C. Cir. 1997) (citing *Natural Resources Defense Council, Inc.* v. *Browner*, 57 F.3d 1122, 1123 (D.C. Cir. 1995)) (discussing that states have primary responsibility for determining an emission reductions program for its areas subject to EPA approval dependent upon whether the SIP as a whole meets applicable requirements of the CAA). Thus, EPA does not believe it is appropriate and necessary to condition approval of Virginia's infrastructure SIP upon inclusion of a particular emission reduction program as long as the SIP otherwise meets the requirements of the CAA. Sierra Club's comments regarding emission limits providing "regulatory certainty" for EGUs are irrelevant to EPA's approval of Virginia's infrastructure SIP for the 2010 SO_2 NAAQS, and EPA disagrees that the infrastructure SIP must be disapproved for not including enforceable emissions limitations to prevent future nonattainment designations or aid in providing "regulatory certainty."

Comment 10: The Commenter claims EPA must disapprove the proposed infrastructure SIP for the 2010 SO_2 NAAQS for its failure to include measures to ensure compliance with section 110(a)(2)(A) for the 2010 SO_2

[18] While monitoring pursuant to NSPS requirements in 40 CFR part 60 may not be sufficient for 1-hour SO_2 emission limits, EPA does not believe Sierra Club's comment regarding NSPS monitoring provisions is relevant at this time because EPA finds 1-hour SO_2 emission limits and associated monitoring and averaging periods are not required for our approval of Virginia's SO_2 infrastructure SIP.

the Commenter that sections 110(a)(1) and (a)(2) of the CAA generally require states to submit, within three years of promulgation of a new or revised NAAQS, a plan which addresses cross-state air pollution under section 110(a)(2)(D)(i)(I). However, EPA disagrees with the Commenter's argument that EPA cannot approve an infrastructure SIP submission without the good neighbor 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 state 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)).

EPA interprets its authority under section 110(k)(3) of the CAA, as affording EPA the discretion to approve, or conditionally approve, individual elements of Virginia's infrastructure SIP submission for the 2010 SO_2 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 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual severable measures in a plan submission. In short, EPA believes that even if Virginia had made a SIP submission for section 110(a)(2)(D)(i)(I) of the CAA for the 2010 SO_2 NAAQS, which to date it has not, EPA would still have 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 raises no compelling legal or environmental rationale for an alternate interpretation. Nothing in the Supreme Court's April 2014 decision in *EME Homer City* alters EPA's interpretation that EPA may act on individual severable measures, including the requirements of section 110(a)(2)(D)(i)(I), in a SIP submission. *See EPA* v. *EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (affirming a state's obligation to submit a SIP revision addressing section 110(a)(2)(D)(i)(I) independent of EPA's action finding significant contribution or interference with maintenance). In sum, the concerns raised by the Commenter do not establish that it is inappropriate or unreasonable for EPA to approve the portions of Virginia's June 18, 2014 infrastructure SIP submission for the 2010 SO_2 NAAQS.

Furthermore, as discussed above, EPA has no obligation to issue a FIP pursuant to 110(c)(1) to address Virginia's obligations under section 110(a)(2)(D)(i)(I) until EPA first either finds Virginia failed to make the required submission addressing the element or the Commonwealth has made such a submission but it is incomplete, or EPA disapproves a SIP submittal addressing that element. Until either occurs, EPA does not have the authority to issue a FIP pursuant to section 110(c) with respect to the good neighbor provision. Therefore, EPA disagrees with the Commenter's contention that it must issue a FIP for Virginia to address 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS at this time.

Regarding Sierra Club's assertion that one stationary source is causing "exceedances" in other states according to the modeling conducted by Sierra Club, EPA believes such assertion is irrelevant to our action approving Virginia's infrastructure SIP for the 2010 SO_2 NAAQS because EPA has not proposed any action on section 110(a)(2)(D)(i)(I) regarding Virginia's obligations to address the transport of SO_2 emissions. EPA may consider such information if Sierra Club resubmits when EPA does act upon a Virginia SIP submission to address 110(a)(2)(D)(i)(I) obligations for the 2010 SO_2 NAAQS.

Comment 12: Sierra Club contends that the EPA must disapprove the proposed infrastructure SIP because it does not contain adequate provisions to prohibit sources and emissions in Virginia from interfering with another state's visibility as required by section 110(a)(2)(D)(i)(II) of the CAA. The Commenter cites to the Supreme Court's decision in *EME Homer City* in support of its statement that Virginia's duty to protect visibility is a mandatory duty. The Commenter asserts EPA ignores its deadline by not acting in today's rulemaking on the visibility prong of section 110(a)(2)(D)(i)(II) and asserts EPA cites no legally defensible reason for not acting. Finally, the Commenter argues that the "deadline for state action has passed" and EPA must disapprove the SO_2 infrastructure SIP and issue a FIP to address the failings of the infrastructure SIP to protect visibility in other states.

Response 12: EPA disagrees with the Commenter that in today's rulemaking action EPA must disapprove the Virginia SO_2 infrastructure SIP for its failure to protect visibility and issue a FIP addressing visibility protection for Virginia. In EPA's NPR proposing to approve Virginia's infrastructure SIP for the 2010 SO_2 NAAQS, EPA clearly stated that it was not proposing to take any action at that time with respect to the visibility protection provisions in section 110(a)(2)(D)(i)(II). While Virginia did make a SIP submission to address the requirements of section 110(a)(2)(D)(i)(II) for visibility protection, and cited to its regional haze SIP and CAIR as meeting these requirements, EPA did not propose to take any action in the NPR with respect to Virginia's visibility protection obligations pursuant to section 110(a)(2)(D)(i)(II).[22] As indicated in EPA's NPR, EPA anticipates taking later action on the portion of Virginia's June 18, 2014 SIP submission addressing visibility protection.[23] EPA disagrees with the Commenter that EPA cannot approve a portion of an infrastructure SIP submittal without taking action on the visibility protection provision. Further, there is no basis for the contention that EPA must issue a FIP under section 110(c) within two years,

[22] On June 13, 2012 (77 FR 35287), EPA finalized a limited approval of Virginia's October 4, 2010 regional haze SIP, and subsequent supplements, to address the first implementation period for regional haze. On June 7, 2012, EPA issued a limited disapproval of this SIP because of Virginia's reliance on CAIR to meet certain regional haze requirements, which EPA replaced in August 2011 with CSAPR (76 FR 48208 (August 8, 2011)). 77 FR 33641. EPA had also issued on June 7, 2012 in the same action a FIP that replaced Virginia's reliance on CAIR with reliance on CSAPR for certain regional haze requirements. *Id.* Later, as discussed previously, the D.C. Circuit in *EME Homer City Generation*, 696 F.3d 7, vacated CSAPR and kept CAIR in place. Subsequently, on April 30, 2014, the Supreme Court vacated the D.C. Circuit decision and remanded the matter to the D.C. Circuit for further proceedings. *EME Homer City*, 134 S. Ct. 1584. On October 23, 2014, after we proposed to approve Virginia's infrastructure SIP, the D.C. Circuit lifted the stay on CSAPR. *EME Homer City Generation, L.P.* v. *EPA*, No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3. As mentioned in response to a prior comment, EPA began implementing CSAPR on January 1, 2015. 79 FR 71663 (December 3, 2014) (interim final rule revising CSAPR compliance deadlines). EPA will take appropriate action on Virginia's obligations under 110(a)(2)(D)(i)(II) for visibility protection in a subsequent rulemaking action.

[23] One way in which section 110(a)(2)(D)(i)(II) for visibility protection may be satisfied for any relevant NAAQS is through an air agency's confirmation in its infrastructure SIP submission that it has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. Infrastructure SIP Guidance at p. 33. As previously indicated, Virginia has a regional haze SIP with limited approval and limited disapproval and a FIP which addresses replacement of CSAPR for CAIR for certain regional haze requirements.

provisions). *See also* 79 FR 55920 (September 17, 2014) (supplemental proposed rulemaking on affirmative defense provisions). In the TSD, EPA also stated that EPA is not approving or disapproving any existing Virginia regulatory or statutory provisions with regard to director's discretion or variance provisions. EPA believes that a number of states may have such provisions which are contrary to the CAA and existing EPA guidance (*see* 52 FR 45109, November 1987), and EPA is also addressing such state regulations in the separate rulemaking. *See* 78 FR 12460. Similarly, EPA is not approving or disapproving any affirmative defense provisions applicable to excess emissions during SSM events in this action. EPA has separately proposed to address such existing affirmative defense provisions in the SIPs of many states, including Virginia. *See also* 79 FR 55920. In the meantime, EPA encourages any state having deficient SIP provisions related to the treatment of excess emissions during SSM events to take steps to correct them as soon as possible. Upon conclusion of EPA's SSM SIP call rulemaking, any states that EPA determines have impermissible SIP provisions related to SSM events will have time to adjust their SIPs where necessary and as required. As EPA is neither approving nor disapproving any new provisions related to automatic or director's discretion exemptions, overbroad state enforcement discretion provisions, or affirmative defense provisions in this rulemaking, EPA disagrees with Sierra Club's comment that the infrastructure SIP "must not allow for such things" and disagrees with any inference from the comment that EPA must disapprove the Virginia SO_2 infrastructure SIP because of any such existing deficient provisions. Moreover, EPA emphasizes that by approving Virginia's SO_2 infrastructure SIP submission, EPA is not approving or reapproving any such deficient provisions that exist in the current SIP.

Regarding the Commenter's statement that the infrastructure SIP should not allow Virginia to exempt certain sources from permitting, the Sierra Club fails to identify any exemptions from permitting that preclude EPA from approving the infrastructure SIP. EPA explained in the TSD for this rulemaking that Virginia's permitting program for major and minor stationary sources met requirements in the CAA for section 110(a)(2)(C). Specifically, EPA stated Virginia has a SIP-approved minor new source review (NSR) program located in 9 VAC 5–80–10 (New and Modified Stationary Sources) and 9 VAC 5–80–11 (Stationary Source Permit Exemption Levels) which regulates certain modifications and construction of stationary sources within areas covered by its SIP as necessary to assure the NAAQS are achieved. EPA had previously approved such provisions into the Virginia SIP as they met requirements for a minor NSR program in accordance with the CAA and 40 CFR 51.160. *See* 65 FR 21315 (April 21, 2000).

EPA's TSD for this rulemaking also explained Virginia's SIP met requirements in section 110(a)(2)(C) for a PSD permit program as required in part C of title I of the CAA. In Virginia, construction and modification of stationary sources are covered under Article 8, Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas (9 VAC 5–80–1605 *et seq.*) which is included in the approved Virginia SIP. *See* 40 CFR 52.2420(c). Article 8 also provides that construction and modification of major stationary sources will not cause or contribute to a violation of any NAAQS (9 VAC 5–80–1635, Ambient Air Increments and 9 VAC 5–80–1645, Ambient Air Ceilings) and requires application of Best Available Control Technology to new or modified sources (9 VAC 5–80–1705, Control Technology Review). EPA has previously approved Virginia's PSD permit program as meeting the requirements in part C, title I of the CAA and 40 CFR 51.166. *See* 79 FR 10377 (February 25, 2014). The Sierra Club has not identified any specific exemption that is allegedly problematic or any recent amendments to the Virginia rules that has added such an exemption. The Sierra Club has not demonstrated that Virginia's permitting program for major and minor stationary sources does not meet requirements in the CAA for section 110(a)(2)(C).

III. Final Action

EPA is approving the following elements of Virginia's June 18, 2014 SIP revision for the 2010 SO_2 NAAQS: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD requirements), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J) (consultation, public notification, and PSD), (K), (L), and (M). Virginia's SIP revision provides the basic program elements specified in Section 110(a)(2) necessary to implement, maintain, and enforce the 2010 SO_2 NAAQS. This final rulemaking action does not include action on section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D, title I of the CAA, because 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. Additionally, EPA will take later, separate action on section 110(a)(2)(D)(i)(I) (interstate transport of emissions), (D)(i)(II) (visibility protection), (J) (visibility protection) and (E)(ii) (Section 128, "State Boards") for the 2010 SO_2 NAAQS as previously discussed.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts . . ." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under

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 2010 Sulfur Dioxide NAAQS.	Statewide	6/18/14	3/4/15 [Insert **Federal Register** citation].	This action addresses the following CAA elements, or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J) (consultation, notification, and PSD), (K), (L), and (M).

[FR Doc. 2015–04377 Filed 3–3–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0700; FRL–9923–77–Region–6]

Approval and Promulgation of Implementation Plans; Arkansas; Revisions for the Regulation and Permitting of Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of three revisions to the Arkansas State Implementation Plan (SIP) submitted by the Arkansas Department of Environmental Quality on July 26, 2010; November 6, 2012; and December 1, 2014. Together, these three submittals update the Arkansas SIP such that the ADEQ has the authority to implement the current National Ambient Air Quality Standards (NAAQS) and regulate and permit emissions of fine particulate matter (particulate matter with diameters less than or equal to 2.5 micrometers ($PM_{2.5}$)), and its precursors, through the Arkansas Prevention of Significant Deterioration (PSD) program. The EPA has determined that the Arkansas PSD program meets all Clean Air Act (CAA or the Act) requirements for $PM_{2.5}$ PSD and, as a result, our final action will stop the two Federal Implementation Plan (FIP) clocks that are currently running on the Arkansas PSD program pertaining to $PM_{2.5}$ PSD implementation. The EPA is also approving a portion of the December 17, 2007, Arkansas SIP submittal for the $PM_{2.5}$ NAAQS pertaining to interstate transport of air pollution and PSD. The EPA is finalizing these actions under section 110 and part C of the CAA.

DATES: This final rule is effective on April 3, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2014–0700. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, Air Permits Section (6PD–R), telephone (214) 665–2115, email address *wiley.adina@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

Table of Contents

I. Background

The background for today's action is discussed in detail in our November 10, 2014 proposal (79 FR 66633). In that notice, we proposed to approve portions of three SIP submittals for the State of Arkansas submitted on July 26, 2010; November 6, 2012; and September 10, 2014, that collectively update the Arkansas SIP to provide for regulation and permitting of $PM_{2.5}$ in the Arkansas PSD program consistent with federal PSD permit requirements.

The September 10, 2014, submittal was a request for parallel processing of revisions adopted by the ADEQ on August 22, 2014, as revisions to the state regulations. Under the EPA's "parallel processing" procedure, the EPA proposes a rulemaking action on a proposed SIP revision concurrently with the State's public review process. If the State's proposed SIP revision is not significantly or substantively changed, the EPA will finalize the rulemaking on the SIP revision as proposed after responding to any submitted comments. Final rulemaking action by the EPA will occur only after the final SIP revision has been fully adopted by the ADEQ and submitted formally to the EPA for approval as a revision to the Arkansas SIP. See 40 CFR part 51, Appendix V.

The ADEQ completed their state rulemaking process and submitted the final revisions to the Arkansas SIP on December 1, 2014. The EPA has evaluated the State's final SIP revision for any changes made from the time of proposal. See "Addendum to the TSD" for EPA–R06–OAR–2014–0700, available in the rulemaking docket. Our evaluation indicates that the ADEQ made no changes to the proposed SIP revision. As such, the EPA is proceeding with our final approval of the revisions to the Arkansas SIP. This action is being taken under section 110 of the Act. We did not receive any comments regarding our proposal.

II. Final Action

We are approving portions of three SIP submittals for the State of Arkansas submitted on July 26, 2010; November 6, 2012; and December 1, 2014, because we have determined that these SIP packages were adopted and submitted in accordance with the CAA and EPA regulations regarding implementation of the $PM_{2.5}$ NAAQS. The EPA finds that the Arkansas PSD SIP meets all the CAA PSD requirements for implementing the 1997 and 2006 $PM_{2.5}$ NAAQS, including the $PM_{2.5}$ PSD requirements contained in the federal regulations as of December 9, 2013, including regulation of NO_X and SO_2 as $PM_{2.5}$ precursors, regulation of condensables, and $PM_{2.5}$ increments. As a result of today's final action, the EPA will stop the two FIP clocks that are currently running on the Arkansas PSD program pertaining to $PM_{2.5}$ PSD implementation. The EPA is approving the following revisions into the Arkansas SIP:

- Revisions to Regulation 19, Chapter 1 submitted on July 26, 2010, and November 6, 2012;