ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0503; FRL–9935–17–Region 5]

Air Plan Approval; Minnesota; 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 some elements and disapprove other elements of state implementation plan (SIP) submissions from Minnesota 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 matter ($PM_{2.5}$) 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 state's responsibilities under the CAA. EPA is disapproving certain elements of Minnesota's submissions relating to Prevention of Significant Deterioration (PSD) requirements. Minnesota already administers Federally promulgated regulations that address the disapprovals described in this rulemaking. Therefore, the state is not obligated to submit any new or additional regulations as a result of this disapproval. The proposed rulemaking associated with this final action was published on June 26, 2015, and EPA received one comment letter during the comment period, which ended on July 27, 2015.

DATES: This final rule is effective on November 19, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2014–0503. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, 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 at the 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 Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

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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 state submissions does this rulemaking address?

This rulemaking addresses June 12, 2014, submissions and a February 3, 2015, clarification from the Minnesota Pollution Control Agency (MPCA) intended to address all applicable infrastructure requirements for the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS.

B. Why did the state make these SIP submissions?

Under section 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, including the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ 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 for the NAAQS already meet those requirements.

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

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from Minnesota that address the infrastructure requirements of CAA section 110(a)(1) and (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), which states that 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 section 110(a)(1) and (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 SIP submissions that address the nonattainment planning requirements of part D and the PSD requirements of part C of title I of the CAA, and ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A.

This rulemaking will not cover three substantive areas because they are not integral to acting on a state's infrastructure SIP submissions: (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 notice or without requiring further approval by EPA, that may be contrary to the CAA; and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these

substantive areas in separate rulemakings. A detailed history, interpretation, and rationale as they relate to infrastructure SIP requirements can be found in EPA's 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).

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

The public comment period for EPA's proposed actions with respect to Minnesota's satisfaction of the infrastructure SIP requirements for the 2008 ozone NAAQS closed on July 27, 2015. EPA received one comment letter, which was from the Sierra Club. A synopsis of the comments contained in this letter and EPA's responses are provided below.

Comment 1: The Sierra Club states that, on its face, the CAA ''requires ISIPs [infrastructure SIPs] to be adequate to prevent exceedances 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) that requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which the commenter claims include the maintenance plan requirement. Sierra Club notes the CAA definition of ''emission limit'' and reads these provisions together to require ''enforceable emission limits on sources that are sufficient to ensure maintenance of the NAAQS.''

Response 1: EPA disagrees that section 110 must be interpreted in the manner suggested by Sierra Club. 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 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 the section 110 plan provide for ''attainment'' of the NAAQS and section 110(a)(2)(B) specified that the plan must include ''emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].''

In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of the state were violating the NAAQS (*i.e.,* were nonattainment) or were meeting the NAAQS (*i.e.,* were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS.

In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182. 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 [sic] 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: Sierra Club 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 Minnesota. Sierra Club also contends that the legislative history of the CAA supports its 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: Sierra Club cites to 40 CFR 51.112(a), which provides 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 was amended to separate Infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations nonetheless 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 Sierra Club references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs, and claims that they were actions in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject infrastructure SIPs. It first points to a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the SO_2 NAAQS (71 FR 12623, March 13, 2006). In that action, EPA cited section 110(a)(2)(A) of the CAA as a basis for disapproving a revision to the state plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, Sierra Club cites a 2013 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 (78 FR 78721, December 27, 2013). 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.''

The Sierra Club also asserts that EPA stated in its Infrastructure SIP Guidance that states could postpone specific requirements for startup, shutdown, and malfunction (SSM), but did not specify the postponement of any other requirements. The commenter concludes that emissions limits ensuring attainment of the standard cannot be delayed.

Response 4: EPA does not agree that the two prior actions referenced by the Sierra Club establish how EPA reviews infrastructure SIPs. It is clear from both the final Missouri rulemaking and the proposed and final Indiana rulemakings that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather 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. Similarly, the Indiana action does not provide support for the Sierra Club's position (78 FR 78720, December 27, 2013). The review in that rule was of a completely different requirement than the section 110(a)(2)(A) SIP. In that case, the State had an approved SO_2 attainment plan and was seeking to remove from the SIP provisions relied on as part of the modeled attainment demonstration. EPA proposed that the State had failed to demonstrate under section 110(l) of the CAA why the SIP revision would not result in increased SO_2 emissions and thus interfere with attainment of the NAAQS. Nothing in that rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved attainment plan will not interfere with attainment of the NAAQS.

EPA also does not agree that any requirements related to emission limits have been postponed. As stated in a previous response, EPA interprets the requirements under 110(a)(2)(A) to include enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean, for purposes of section 110, that 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. Emission limits providing for attainment of a new standard are

triggered by the designation process and have a different schedule in the CAA than the submittal of infrastructure SIPs.

As discussed in detail in the proposed rules, EPA finds that the Minnesota SIPs meet 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 Minnesota has demonstrated that they have the necessary tools to implement and enforce a NAAQS.

Comment 5: Sierra Club 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. Sierra Club first cites to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meet the national standards.'' Sierra Club also cites to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS and *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, 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 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 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 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 their infrastructure SIPs. The language from the opinion 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'' and the decision in this case has no bearing here.

In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the court was reviewing a Federal implementation plan that EPA promulgated after a long history of the state failing to submit an adequate state implementation plan. 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 CAA section 110(l), the provision

governing ''revisions'' to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section 110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

Comment 6: Sierra Club asserts that EPA cannot approve Minnesota's infrastructure submittals for the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS because Minnesota has not incorporated the standards into their SIP. The commenter points out that the Minnesota Administrative Rules section 7009.0800 does list previous standards but does not yet include the ones listed above and is therefore out of compliance with the CAA.

Response 6: There is not a CAA requirement for states to incorporate the NAAQS updates into their SIPs. Therefore, EPA disagrees with the commenter that by not doing so, Minnesota is out of compliance with the CAA. The states are required to comply with the NAAQS regardless of whether or not they are in the SIP and Minnesota Statue 116.07 gives MPCA broad authority to implement rules and standards as needed for the purpose of controlling air pollution.

Comment 7: 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 that show NAAQS exceedances through modeling. 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 required by section 110(a)(2)(A). Sierra Club asserts that emission limits are especially important for meeting the 2010 SO_2 NAAQS because SO_2 impacts are strongly source-oriented. Sierra Club states that coal-fired electric generating units (EGUs) are large contributors to SO_2 emissions but contends that Minnesota did not demonstrate that emissions allowed by the proposed infrastructure SIPs from such large sources of SO_2 will ensure compliance with the 2010 SO_2 NAAQS. Sierra Club claims that the proposed infrastructure SIP would allow major sources to continue operating with present emission limits. Sierra Club then refers to air dispersion modeling it conducted for four coal-fired EGUs in Minnesota including the Minnesota Power Boswell Coal Plant (''Boswell Plant''), Otter Tail Hoot Lake Coal Plant (''Hoot Lake Coal Plant''), Xcel Energy Sherburne County Coal Plant (''Sherco Coal Plant''), and Taconite Harbor Energy Center (''Taconite Harbor Plant''). Sierra Club asserts that the results of the air dispersion modeling it conducted employing EPA's AERMOD program for modeling used the plants' allowable and actual emissions, and showed that the plants could cause exceedances of the 2010 SO_2 NAAQS with either allowable emissions at all four facilities or actual emissions at the Sherco Plant and Taconite Harbor Plant.[1]

Based on the modeling, Sierra Club asserts that the Minnesota SO_2 infrastructure SIP submittals authorizes these EGUs to cause exceedances of the NAAQS with allowable and actual emission rates, and therefore that 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. As a result, Sierra Club claims EPA must disapprove Minnesota's proposed SIP revisions. In addition, Sierra Club asserts that additional emission limits should be imposed on the plants that ensure attainment and maintenance of the NAAQS at all times.

Response 7: EPA believes that section 110(a)(2)(A) of the CAA is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attainment and maintenance of a new or revised NAAQS. These SIP revisions, also known as infrastructure SIPs, should 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. 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. As mentioned above, with regard to the requirement for emission limitations, EPA has interpreted this to mean that states 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.

EPA's interpretation that infrastructure SIPs are more general planning SIPs is consistent with the CAA 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 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 a new NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for ''attainment'' of the NAAQS and section 110(a)(2)(B) specified that the plan must include ''emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].'' In 1977, Congress recognized that the existing structure was not sufficient and that 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 a 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 not meeting the NAAQS, and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS. 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 of the CAA 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

[1] Sierra Club asserts its modeling followed protocols pursuant to 40 CFR part 50, appendix W, EPA's March 2011 guidance for implementing the 2010 SO_2 NAAQS, and EPA's December 2013 SO_2 NAAQS Designation Technical Assistance Document.

110 is only the initial stepping-stone in the planning process for a specific NAAQS. In addition, more detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS, depending upon how air quality status is judged under other provisions of the CAA, such as the designations process under section 107.

As stated in response to a previous comment, EPA asserts that section 110 of the CAA is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) of the CAA 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 an adequate monitoring network and an enforcement program. As discussed above, EPA has interpreted the requirement for emission limitations in section 110 to mean that 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. Finally, as EPA stated in the Infrastructure SIP Guidance which specifically provides guidance to states in addressing the 2010 SO_2 NAAQS, ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.'' Infrastructure SIP Guidance at p. 2. On April 12, 2012, EPA explained its expectations regarding the 2010 SO_2 NAAQS infrastructure SIPs via letters to each of the states. EPA communicated in the April 2012 letters that all states were expected to submit SIPs meeting the ''infrastructure'' SIP requirements under section 110(a)(2) of the CAA by June 2013. At the time, the EPA was undertaking a stakeholder outreach process to continue to develop possible approaches for determining attainment status with the SO_2 NAAQS and implementing this NAAQS. EPA was abundantly clear in the April 2012 letters to states that EPA did not expect states to submit substantive attainment demonstrations or modeling demonstrations showing attainment for potentially unclassifiable areas in infrastructure SIPs due in June 2013, as EPA had previously suggested in its 2010 SO_2 NAAQS preamble based upon information available at the time and in prior draft implementation guidance in 2011 while EPA was gathering public comment. The April 2012 letters to states recommended states focus infrastructure SIPs due in June 2013, such as Minnesota's SO_2 infrastructure SIP, on ''traditional infrastructure elements'' in section 110(a)(1) and (2) rather than on modeling demonstrations for future attainment for potentially unclassifiable areas.[2]

Therefore, EPA continues to believe that the elements of section 110(a)(2) which address SIP revisions for nonattainment areas including measures and modeling demonstrating attainment are due by the dates statutorily prescribed under subparts 2 through 5 under part D of title I. The CAA directs states to submit these 110(a)(2) elements for nonattainment areas on a separate schedule from the ''structural requirements'' of 110(a)(2) which are due within three years of adoption or revision of a NAAQS. The infrastructure SIP submission requirement does not move up the date for any required submission of a part D plan for areas designated nonattainment for the new NAAQS. Thus, elements relating to demonstrating attainment for areas not attaining the NAAQS are not necessary for states to include in the infrastructure SIP submission, and the CAA does not provide explicit requirements for demonstrating attainment for areas potentially designated as ''unclassifiable'' (or that have not yet been designated) regarding attainment with a particular NAAQS.

As stated previously, EPA believes that the proper inquiry at this juncture is whether Minnesota has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the infrastructure submittal. Emissions limitations and other control measures needed to attain the NAAQS in areas designated nonattainment for that NAAQS are due on a different schedule from the section 110 infrastructure elements. States, like Minnesota, may reference pre-existing SIP emission limits or other rules contained in part D plans for previous NAAQS in an infrastructure SIP submission. For example, Minnesota submitted lists of existing emission reduction measures in the SIP that control emissions of SO_2 as discussed above in response to a prior comment and discussed in detail in our proposed rulemakings. Minnesota's SIP revisions reflect several provisions that have the ability to reduce SO_2. Although the Minnesota SIP relies on measures and programs used to implement previous SO_2 NAAQS, these provisions will provide benefits for the 2010 SO_2 NAAQS. The identified Minnesota SIP measures help to reduce overall SO_2 and are not limited to reducing SO_2 levels to meet one specific NAAQS.

Additionally, as discussed in EPA's proposed rule, Minnesota has the ability to revise its SIPs when necessary (*e.g.*, in the event the Administrator finds its plans 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).

EPA believes the requirements for emission reduction measures for an area designated nonattainment to come into attainment with the 2010 primary SO_2 NAAQS are in sections 172 and 192 of the CAA, and, therefore, the appropriate time for implementing requirements for

[2] In EPA's final SO_2 NAAQS preamble (75 FR 35520, June 22, 2010) and subsequent draft guidance in March and September 2011, EPA had expressed its expectation that many areas would be initially designated as unclassifiable due to limitations in the scope of the ambient monitoring network and the short time available before which states could conduct modeling to support their designations recommendations due in June 2011. In order to address concerns about potential violations in these potentially unclassifiable areas, EPA initially recommended that states submit substantive attainment demonstration SIPs based on air quality modeling by June 2013 (under section 110(a)) that show how their unclassifiable areas would attain and maintain the NAAQS in the future. *Implementation of the 2010 Primary 1-Hour SO_2 NAAQS, Draft White Paper for Discussion,* May 2012 (for discussion purposes with Stakeholders at meetings in May and June 2012), available at *http://www.epa.gov/airquality/sulfurdioxide/implement.html.* However, EPA clearly stated in this 2012 Draft White Paper its clarified implementation position that it was no longer recommending such attainment demonstrations for unclassifiable areas for June 2013 infrastructure SIPs. *Id.* 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 and 191 of the CAA. Section 191 of the CAA requires states to submit SIPs in accordance with section 172 for areas designated nonattainment with the SO_2 NAAQS. After seeking such comment, EPA has now issued guidance for the nonattainment area SIPs due pursuant to sections 191 and 172. *See Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,* Stephen D. Page, Director, EPA's Office of Air Quality Planning and Standards, to Regional Air Division Directors Regions 1–10, April 23, 2014. In September 2013, EPA had previously issued specific guidance relevant to infrastructure SIP submissions due for the NAAQS, including the 2010 SO_2 NAAQS. *See* Infrastructure SIP Guidance.

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 2010 SO_2 standard. EPA did not designate any portions of Minnesota as nonattainment areas for the 2010 SO_2 NAAQS (78 FR 47191, August 5, 2013). In separate future actions, EPA will address the designations for all other areas for which the Agency 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 for future attainment status determinations under the 2010 SO_2 NAAQS). For the areas designated nonattainment in August 2013, attainment SIPs were due by April 4, 2015, and must contain demonstrations that the areas will attain as expeditiously as practicable, but no later than October 4, 2018, pursuant to sections 172, 191 and 192, including a plan for enforceable measures to reach attainment of the NAAQS. EPA believes it is not appropriate to bypass the attainment planning process by imposing separate requirements outside the attainment planning 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 III–2013–01 (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 Minnesota must include additional SO_2 emission limits on sources in order to demonstrate future attainment, where needed.

The Sierra Club'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 Minnesota 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 process realistically accounts 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 (June 22, 2010). As mentioned previously above, EPA has proposed a process to address additional areas in states which may not be attaining the 2010 SO_2 NAAQS. *See* 79 FR 27446 (May 13, 2014) (proposing process to gather further information from additional monitoring or modeling that may be used to inform future attainment status determinations). In addition, in response to lawsuits in district courts seeking to compel EPA's remaining designations of undesignated areas under the NAAQS, EPA has been placed under a court order to complete the designations process under section 107. However, because the purpose of an infrastructure SIP submission is for more general planning purposes, EPA does not believe Minnesota was obligated during this infrastructure SIP planning process to account for controlled SO_2 levels at individual sources. *See Homer City/Mansfield Order* at 10–19.

Minnesota currently has the ability to control emissions of SO_2. MPCA identified enforceable permits and administrative orders with SO_2 emission limits. In previous rulemakings, EPA has approved these permits and orders into Minnesota's SIP (see 59 FR 17703, April 14, 1994; 59 FR 17703, 64 FR 5936, February 8, 1999; 66 FR 14087, March 9, 2001; 67 FR 8727, February 26, 2002; 72 FR 68508, December 5, 2007; 74 FR 18138, April 21, 2009; 74 FR 18634, April 24, 2009; 74 FR 18638, April 24, 2009; 74 FR 63066, December 2, 2009; 75 FR 45480, August 3, 2010; 75 FR 48864, August 12, 2010; 75 FR 81471, December 28, 2010; and 78 FR 28501, May 15, 2013). Also, an administrative order issued as part of Minnesota's Regional Haze SIP includes SO_2 limits. Additionally, state rules that have been incorporated into Minnesota's SIP (at Minn. R. 7011.0500 to 7011.0553, 7011.0600 to 7011.0625, 7011.1400 to 7011.1430, 7011.1600 to 7011.1605, and 7011.2300) contain SO_2 emission limits. Also, Minn. R. 7011.0900 to 7011.0909 include fuel sulfur content restrictions that can limit SO_2 emissions. These regulations support compliance with and attainment of the 2010 SO_2 NAAQS.

Regarding the air dispersion modeling conducted by Sierra Club pursuant to AERMOD for the coal-fired EGUs, EPA is not at this stage prepared to opine on whether it demonstrates violations of the NAAQS, and does not find the modeling information relevant at this time for review of an infrastructure SIP. While EPA has extensively discussed the use of modeling for attainment demonstration purposes and for designations and other actions in which areas' air quality status is determined, 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 regarding SO_2 implementation and *Implementation of the 2010 Primary 1-Hour SO_2 NAAQS, Draft White Paper for Discussion,* May 2012, available at *http://www.epa.gov/airquality/ sulfurdioxide/implement.html*. 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, 2014, *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions.*

In conclusion, EPA disagrees with Sierra Club's statements that EPA must disapprove Minnesota's infrastructure SIP submission because it does not establish at this time specific enforceable SO_2 emission limits either on coal-fired EGUs or other large SO_2 sources in order to demonstrate attainment with the NAAQS.

Comment 8: Sierra Club asserts that modeling is the appropriate tool for evaluating adequacy of infrastructure SIPs and ensuring attainment and maintenance of the 2010 SO_2 NAAQS. The commenter refers to EPA's historic use of air dispersion modeling for attainment designations as well as ''SIP revisions.'' The commenter cites to prior EPA statements that the Agency has used modeling for designations and attainment demonstrations, including statements in the 2010 SO_2 NAAQS preamble, EPA's 2012 Draft White Paper for Discussion on Implementing the 2010 SO_2 NAAQS, and a 1994 SO_2 Guideline Document, as modeling could better address the source-specific impacts of SO_2 emissions and historic challenges from monitoring SO_2

emissions.[3] The commenter also discusses MPCA's previous use and support of SO_2 modeling, specifically citing a Letter from the MPCA Commissioner to the EPA and their use of modeling for setting title V limits.

The commenter discusses statements made by EPA staff discussing use of modeling and monitoring in setting emission limitations or determining ambient concentrations resulting from sources, discussing performance of AERMOD as a model, and discussing that modeling is capable of predicting whether the NAAQS is attained and whether individual sources contribute to SO_2 NAAQS violations. The commenter cites to EPA's history of employing air dispersion modeling for increment compliance verifications in the permitting process for the PSD program required in part C of the CAA. The commenter claims the Boswell Plant, Hoot Lake Coal Plant, Sherco Coal Plant, and Taconite Harbor Plant are examples of sources in elevated terrain where the AERMOD model functions appropriately in evaluating ambient impacts.

The commenter asserts EPA's use of air dispersion modeling was upheld in *GenOn REMA, LLC* v. *EPA,* 722 F.3d 513 (3rd Cir. 2013) where an EGU challenged EPA's use of CAA section 126 to impose SO_2 emission limits on a source due to cross-state impacts. The commenter claims the Third Circuit in *GenOn REMA* upheld EPA's actions after examining the record which included EPA's air dispersion modeling of the one source as well as other data.

The commenter cites to *Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto Ins. Co.,* 463 U.S. 29,43 (1983) and *NRDC* v. *EPA,* 571 F.3d 1245, 1254 (D.C. Cir. 2009) for the general proposition that it would be arbitrary and capricious for an agency to ignore an aspect of an issue placed before it and for the statement that an agency must consider information presented during notice-and-comment rulemaking.

Finally, the commenter claims that Minnesota's proposed SO_2 infrastructure SIP lacks emission limitations informed by air dispersion modeling and therefore fails to ensure Minnesota will achieve and maintain the 2010 SO_2 NAAQS. Sierra Club claims EPA must require adequate, 1-hour SO_2 emission limits in the infrastructure SIP that show no exceedances of NAAQS when modeled.

Response 8: EPA agrees with the commenter that air dispersion modeling, such as AERMOD, can be an important tool in the CAA section 107 designations process and in the attainment SIP process pursuant to sections 172 and 192, including supporting required attainment demonstrations. EPA agrees that prior EPA statements, EPA guidance, and case law support the use of air dispersion modeling in the designations process and attainment demonstration process, as well as in analyses of whether existing approved SIPs remain adequate to show attainment and maintenance of the SO_2 NAAQS. However, EPA disagrees with the commenter that EPA must disapprove the Minnesota SO_2 infrastructure SIP for its alleged failure to include source-specific SO_2 emission limits that show no exceedances of the NAAQS when modeled.

As discussed previously above and in the Infrastructure SIP Guidance, EPA believes the conceptual purpose of an infrastructure SIP submission is to ensure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS and that 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 the new or revised NAAQS. *See* Infrastructure SIP Guidance at p. 2. EPA believes the attainment planning process detailed in part D of the CAA, including attainment SIPs required by sections 172 and 192 for areas not attaining the NAAQS, is the appropriate place for the state to evaluate measures needed to bring nonattainment areas into attainment with a NAAQS and to impose additional emission limitations such as SO_2 emission limits on specific sources. While EPA had initially suggested in the final 2010 SO_2 NAAQS preamble (75 FR 35520) and subsequent draft guidance in March and September 2011 that EPA recommended states submit substantive attainment demonstration SIPs based on air quality modeling in section 110(a) SIPs due in June 2013 to show how areas expected to be designated as unclassifiable would attain and maintain the NAAQS, these initial statements in the preamble and 2011 draft guidance were based on EPA's initial expectation that most areas would by June 2012 be initially designated as unclassifiable due to limitations in the scope of the ambient monitoring network and the short time available before which states could conduct modeling to support designations recommendations in 2011. However, after 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 to the states and in the May 2012 *Implementation of the 2010 Primary 1-Hour SO_2 NAAQS, Draft White Paper for Discussion* that EPA was clarifying its implementation position and that EPA was no longer recommending such attainment demonstrations supported by air dispersion modeling for unclassifiable areas (which had not yet been designated) for June 2013 infrastructure SIPs. EPA reaffirmed this position that EPA did not expect attainment demonstrations for areas not designated nonattainment for infrastructure SIPs in its February 6, 2013, memorandum, ''Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard.'' [4] As previously mentioned, EPA had stated in the preamble to the 2010 SO_2 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 191–192 and 172 and proposed a process for further designations for the 2010 SO_2 NAAQS, 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 (May 13, 2014) (proposing process and timetables for additional SO_2 designations informed through ambient monitoring and/or air quality modeling). While the EPA guidance for attainment SIPs and the proposed process for additional designations discusses use of air dispersion modeling, EPA's 2013 Infrastructure SIP Guidance did not require use of 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 Minnesota SO_2 infrastructure SIP submittal contains the structural requirements to address elements in section 110(a)(2) as discussed in detail in our TSD

[3] The commenter also cites to a 1983 EPA Memorandum on section 107 designations policy regarding use of modeling for designations and to the 2012 *Mont. Sulphur & Chem. Co.* case where EPA had designated an area in Montana as nonattainment due to modeled violations of the NAAQS.

[4] 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.*

supporting our proposed approval and in our Response to a prior comment. 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 such as SO_2 in a SO_2 infrastructure SIP.

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 our analysis here of the Minnesota infrastructure SIP, as this SIP for section 110(a) is not an attainment SIP required to demonstrate attainment of the NAAQS pursuant to section 172. EPA also finds Sierra Club's comments relating to MPCA's current use of modeling to be likewise irrelevant. In addition, Sierra Club's comments relating to EPA's use of AERMOD or modeling in general in designations pursuant to section 107, are likewise irrelevant as EPA's present approval of Minnesota's infrastructure SIP is unrelated to the section 107 designations process. Nor is our 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 Minnesota 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 Minnesota'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 again 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 designations, attainment SIPs, and demonstrating significant contributions to interstate transport. However, EPA's approval of Minnesota's infrastructure SIP is based on our determination that Minnesota 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 Minnesota 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 Boswell Plant, Hoot Lake Coal Plant, Sherco Coal Plant, and Taconite Harbor Plant 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 section 110(a) are the appropriate place to require emission limits demonstrating future attainment with a NAAQS. Part D of the CAA contains numerous requirements for the NAAQS attainment planning process including requirements for attainment demonstrations in section 172 supported by appropriate modeling. As also discussed previously, section 107 supports EPA's use of modeling in the designations process. In *Catawba County* v. *EPA,* 571 F.3d 20 (D.C. Cir. 2009), the DC Circuit upheld EPA's consideration of data or factors for designations other than ambient monitoring. EPA does not believe state infrastructure SIPs must contain emission limitations informed by air dispersion modeling in order to meet the requirements of section 110(a)(2)(A). Thus, EPA has not evaluated the persuasiveness of the commenter's submitted modeling in finding that it is not relevant to the approvability of Minnesota's proposed infrastructure SIP for the 2010 SO_2 NAAQS.

Comment 9: Sierra Club asserts that EPA may not approve the Minnesota proposed SO_2 infrastructure SIP because it fails to include enforceable emission limitations with a 1-hour averaging time that applies at all times. The commenter cites to CAA section 302(k) which requires emission limits to apply on a continuous basis. The commenter claims EPA has stated that 1-hour averaging times are necessary for the 2010 SO_2 NAAQS citing to a February 3, 2011, EPA Region 7 letter to the Kansas Department of Health and Environment regarding need for 1-hour SO_2 emission limits in a PSD permit, an EPA Environmental Hearing Board (EHB) decision rejecting use of 3-hour averaging time for a SO_2 limit in a PSD permit, and EPA's disapproval of a Missouri SIP which relied on annual averaging for SO_2 emission rates.[5] Sierra Club also contends EPA must include monitoring of SO_2 emission limits on a continuous basis using a continuous emission monitor system or systems (CEMs) and cites to section 110(a)(2)(F) which requires a SIP to establish a system to monitor emissions from stationary sources and to require submission of periodic emission reports.

[5] Sierra Club cited to *In re: Mississippi Lime Co.,* PSDAPLPEAL 11–01, 2011 WL 3557194, at * 26–27 (EPA Aug. 9, 2011) and 71 FR 12623, 12624 (March 13, 2006) (EPA disapproval of a control strategy SO_2 SIP).

Sierra Club contends infrastructure SIPs must require such SO_2 CEMs to monitor SO_2 sources regardless of whether sources have control technology installed to ensure limits are protective of the NAAQS. Thus, Sierra Club contends EPA must require enforceable emission limits, applicable at all times, with 1-hour averaging periods, monitored continuously by large sources of SO_2 emissions and must disapprove Minnesota's infrastructure SIP which fails to require emission limits with adequate averaging times.

Response 9: EPA disagrees that EPA must disapprove the proposed Minnesota infrastructure SIP because the SIP does not contain enforceable SO_2 emission limitations with 1-hour averaging periods that apply at all times and with required CEMs. These issues are not appropriate for resolution at this stage. As explained in detail in previous Responses, the purpose of the infrastructure SIP is to ensure that a state has the structural capability to attain and maintain the NAAQS and thus additional SO_2 emission limitations to ensure attainment and maintenance of the NAAQS are not required for such infrastructure SIPs.[6] Likewise, EPA need not address for the purpose of approving Minnesota's infrastructure SIP whether CEMs or some other appropriate monitoring of SO_2 emissions is necessary to demonstrate compliance with emission limits to show attainment of the 2010 NAAQS as EPA believes such SO_2 emission limits and an attainment demonstration when applicable are not a prerequisite to our approval of Minnesota's infrastructure SIP.[7] Therefore, because EPA finds Minnesota's SO_2 infrastructure SIP approvable without the additional SO_2 emission limitations showing attainment of the NAAQS, EPA finds the issues of appropriate averaging periods and monitoring requirements for such future limitations not relevant at this time for our approval of the infrastructure SIP. Sierra Club has cited to prior EPA discussion on emission limitations required in PSD permits (from an EHB decision and EPA's letter to Kansas' permitting authority) pursuant to part C of the CAA which is not relevant nor applicable to section 110 infrastructure SIPs. In addition, as discussed previously, the EPA disapproval of the 2006 Missouri SIP was a disapproval relating to a control strategy SIP required pursuant to part D attainment planning and is likewise not relevant to our analysis of infrastructure SIP requirements.

Comment 10: 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 Nation Ambient Air Quality Standard,'' which Sierra Club contends discussed how states could avoid future nonattainment designations. The commenter asserts EPA must disapprove the Minnesota infrastructure SIP to ensure large sources of SO_2 do not cause exceedances of the 2010 SO_2 NAAQS which would avoid nonattainment designations.

Response 10: EPA appreciates the commenter's concern with assisting Minnesota in avoiding nonattainment designations with the 2010 SO_2 NAAQS and with assisting coal-fired EGUs in achieving regulatory certainty as EGUs make informed decisions on how to comply with CAA requirements. However, Congress designed the CAA such that states have the primary responsibility for assuring air quality within their geographic area by submitting SIPs which will specify how the state will achieve and maintain the NAAQS within the state. 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 further designations of additional areas in each state for the 2010 SO_2 NAAQS. 79 FR 27446. EPA has also entered a settlement to resolve deadline suits regarding the remaining designations that will impose deadlines for three more rounds of designations. Under these schemes, Minnesota would have the initial opportunity to propose 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. Minnesota may on its own accord decide to impose additional SO_2 emission limitations to avoid future designations to nonattainment. However, such considerations are not required of Minnesota to consider at the infrastructure SIP stage of NAAQS implementation, as this action relates to our approval of Minnesota'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 Minnesota's SO_2 infrastructure SIP. 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 or necessary to condition approval of Minnesota's infrastructure SIP upon inclusion of a particular emission reduction program as long as the SIP otherwise meets the requirements of the CAA. EPA disagrees that we must disapprove the infrastructure SIP for not including enforceable emissions limitations to prevent future nonattainment designations.

Comment 11: Sierra Club contends that EPA cannot approve the section 110(a)(2)(A) portion of Minnesota's 2008 ozone infrastructure SIP revision because an infrastructure SIP should include enforceable emission limits to prevent NAAQS violations in areas not designated nonattainment. The commenter alleges that Minnesota is threatened by high concentrations of ozone, and on the edge of exceeding the ozone NAAQS.

Response 11: 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

[6] For a discussion on emission averaging times for emissions limitations for SO_2 attainment SIPs, see the April 23, 2014 *Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions.* EPA explained that it is possible, in specific cases, for states to develop control strategies that account for variability in 1-hour emissions rates through emission limits with averaging times that are longer than 1-hour, using averaging times as long as 30-days, but still provide for attainment of the 2010 SO_2 NAAQS as long as the limits are of at least comparable stringency to a 1-hour limit at the critical emission value. EPA has not yet evaluated any specific submission of such a limit, and so is not at this time prepared to take final action to implement this concept. If and when a state submits an attainment demonstration that relies upon a limit with such a longer averaging time, EPA will evaluate it then.

[7] EPA believes the appropriate time for application of monitoring requirements to demonstrate continuous compliance by specific sources is when such 1-hour emission limits are set for specific sources whether in permits issued by a state pursuant to the SIP or in attainment SIPs submitted in the part D planning process.

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 they contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS.

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 the 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.[8] 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 or may be future monitored violations of the standard in the state and the section 110(a)(2)(A) revision does not have detailed plans for demonstrating how the state will bring that area into attainment. Rather, EPA believes that the proper inquiry at this juncture is whether the state has met the basic structural SIP requirements appropriate when EPA is acting upon the submittal.

Comment 12: Sierra Club suggests that the state adopt specific controls that they contend are cost-effective for reducing nitrogen oxides (NO_X), a precursor to ozone.

Response 12: Minnesota currently has the ability to control emissions of NO_X. NO_X emissions are limited by Minn. R. 7011.0500 to 7011.0553 and 7011.1700 to 7011.1705, as well as an administrative order issued as part of Minnesota's Regional Haze SIP. Minnesota 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 Minnesota 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. Further, in approving Minnesota's infrastructure SIP revision, EPA is affirming that Minnesota has sufficient authority to take the types of actions required by the CAA in order to bring any potential nonattainment areas back into attainment. The commenter has not provided any information to demonstrate that emissions will be affected by the infrastructure SIP submission.

Comment 13: The commenter alleges that EPA cannot approve the infrastructure SIP for the 2010 NO_2 NAAQS unless Minnesota includes adequately stringent emission limits that address the 1-hour NO_2 NAAQS. The commenter points to a news article summarizing research by Clark, Millet, and Marshall showing patterns in environmental justice for NO_2 concentrations in Minnesota and elsewhere.

Response 13: As stated in a previous response, EPA interprets the requirements under 110(a)(2)(A) to include enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean, for purposes of section 110, that 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. Emission limits providing for attainment of a new standard are triggered by the designation process and have a different schedule in the CAA than the submittal of infrastructure SIPs.

Minnesota currently has the ability to control emissions of NO_2. NO_X emissions are limited by Minn. R. 7011.0500 to 7011.0553 and 7011.1700 to 7011.1705, as well as an administrative order issued as part of Minnesota's Regional Haze SIP. Because NO_2 is a subcategory of NO_X, controls relating to NO_X can be expected to limit emissions of NO_2. These regulations support compliance with and attainment of the 2010 NO_2 NAAQS. While EPA employs multiple mechanisms for strengthening environmental justice communities, EPA believes it is inappropriate to address this issue through section 110(a)(2) of the CAA or the infrastructure SIP submittal process. The commenter does not attempt to demonstrate how environmental justice might be lawfully considered as part of Minnesota's infrastructure SIP under CAA section 110(a)(2).

Comment 14: The commenter points to a 2013 MPCA report showing $PM_{2.5}$ monitoring data, and also points out sources of $PM_{2.5}$ emissions including the Sherco Plant, Taconite Harbor Plant, and Silica mining industry, and alleges that Minnesota is close to exceeding the NAAQS. The commenter concludes that EPA cannot approve the infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS unless Minnesota includes enforceable emission limitations.

Response 14: As stated in a previous response, EPA interprets the requirements under 110(a)(2)(A) to include enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean, for purposes of section 110, that the state may rely on measures already in place to address the pollutant at issue or any new control

[8] 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.

measures that the state may choose to submit. Emission limits providing for attainment of a new standard are triggered by the designation process and have a different schedule in the CAA than the submittal of infrastructure SIPs.

Minnesota currently has the ability to control emissions of $PM_{2.5}$. MPCA identified enforceable permits and administrative orders with SO_2 emission limits. In previous rulemakings, EPA has approved these permits and orders into Minnesota's SIP (*see* 59 FR 7218, February 15, 1994; 60 FR 31088, June 13, 1995; 62 FR 39120, July 22, 1997; 65 FR 42861, July 12, 2000; 69 FR 51371, August 19, 2004; 72 FR 51713, September 11, 2007; 74 FR 23632, May 20, 2009; 74 FR 63066, December 2, 2009; 75 FR 11461, March 11, 2010; and 75 FR 78602, December 16, 2010). Additionally, state rules that have been incorporated into Minnesota's SIP (at Minn. R. 7011.0150, 7011.0500 to 7011.0553, 7011.0600 to 7011.0625, 7011.0710 to 7011.0735, 7011.0850 to 7011.0859, 7011.0900 to 7011.0922, 7011.1000 to 7011.1015, 7011.1100 to 7011.1125, 7011.1300 to 7011.1325, and 7011.1400 to 7011.1430) contain PM emission limits. These regulations support compliance with and attainment of the 2012 $PM_{2.5}$ NAAQS.

Comment 15: Throughout its letter, Sierra Club alleges that Minnesota's infrastructure SIP must include provisions for monitoring of emissions of the various NAAQS.

Response 15: As discussed previously, EPA need not address for the purpose of approving Minnesota's infrastructure SIPs whether monitoring of emissions is necessary to demonstrate compliance with emission limits to show attainment of any NAAQS as EPA believes such emission limits and an attainment demonstration when applicable are not a prerequisite to our approval of Minnesota's infrastructure SIP. Therefore, because EPA finds Minnesota's infrastructure SIPs approvable without the additional emission limitations showing attainment of the NAAQS, EPA finds the issues of monitoring requirements not relevant at this time for our approval of the infrastructure SIP.

Comment 16: Sierra Club alleges that Minnesota's infrastructure SIPs contain no emission limits for the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. The commenter states that it provided modeling and other evidence showing that any limits currently in place are insufficient, and that Minnesota is taking little to no action to address any NAAQS exceedances. Sierra Club alleges that standards contained within the infrastructure SIPs were created for earlier NAAQS, and must be revised to reflect the new standards.

Sierra Club asserts that Minnesota's infrastructure SIP must not allow for ambient air incremental increases, variances, exceptions, or exclusions with regard to limits placed on sources of pollutants. The commenter asserts that Minnesota's rules allow exceptions from enforcement, and points to Minn. Stat. 116.07, Minn. R. 7000.7000, and Minn. R. 7007.1850 as examples of methods by which MPCA may grant variances or undermine emission limits.

Additionally, the commentator alleges that Minnesota excludes major sources of emissions from its major permitting program, allowing these sources to emit pollution under fewer restrictions.

Response 16: As stated in a previous response, EPA interprets the requirements under 110(a)(2)(A) to include enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean, for purposes of section 110, that 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. Emission limits providing for attainment of a new standard are triggered by the designation process and have a different schedule in the CAA than the submittal of infrastructure SIPs.

EPA disagrees with the commenter's claim that Minnesota's infrastructure SIP fails to meet any requirements regarding variances. As an initial matter, Minn. Stat. 116.07 and Minn. R. 7000.7000 are not regulations that have been approved into the SIP. Minn. R. 7007.1850 grants the source the right to prove a circumstance beyond its control, but does not limit Minnesota's enforcement authority. Thus, any variance granted by the state pursuant to this provision would not modify the requirements of the SIP. Furthermore, for a variance from the state to be approved into the SIP, a demonstration must be made under CAA section 110(l) showing that the revision does not interfere with any requirements of the CAA including attainment or maintenance of a NAAQS. We disagree that the existence of this provision as solely a matter of state law means that the state does not have adequate authority to carry out the implementation plan.

Finally, we find that there is nothing in the record to support the commenter's assertion that Minnesota excludes major sources of emissions from the major permitting requirements required under title I of the CAA, which is the focus of this action. This action is governed by section 110(a)(2), which falls under title I of the CAA and governs the implementation, maintenance, and enforcement of the NAAQS. As noted above, Minnesota implements the Federal major source PSD program through delegated authority from EPA. Since Minnesota already administers Federally promulgated PSD regulations through delegation, it applies the Federal promulgated regulations in 40 CFR 52.21—not the regulations cited in the comment, or any exclusions they may contain—in determining the major sources subject to title I permitting requirements. We also note that the regulations cited in the comment apply to part 70 operating permits issued under title V of the CAA and certain state permits (see MAR section 7007.0200 and section 7007.0250, respectively). Thus, any evaluation of these regulations must be done pursuant to CAA section 502 and 40 CFR part 70 and state law, respectively, and are not subject to our review under section 110(a)(2).

Comment 17: The commenter alleges that the proposed infrastructure SIP does not address sources significantly contributing to nonattainment or interfering with maintenance of the NAAQS in other states as required by section 110(a)(2)(D)(i)(I) of the CAA, and states EPA must therefore disapprove the infrastructure SIP. Sierra Club states that the CAA requires infrastructure SIPs to address cross-state air pollution within three years of the NAAQS promulgation. The commenter references the recent Supreme Court decision, *EPA* v. *EME Homer City Generation, L.P. et al.,* 134 S. Ct. 1584 (2014), which supports the states' mandatory duty to address cross-state pollution under section 110(a)(2)(D)(i)(I).

Sierra Club additionally alleges that Minnesota cannot rely on the absence of nonattainment areas within the state, when determining whether Minnesota is contributing to nonattainment or interference with maintenance of the NAAQS in downwind states. The commenter also alleges that Minnesota cannot rely on a Federal implementation plan (FIP) for PSD and an approved NSR permitting program when determining that Minnesota is not contributing to nonattainment or interference with maintenance of the

NAAQS in downwind states. Sierra Club additionally alleges that PSD and NSR programs address only new sources, and also apply only in nonattainment areas. The commenter notes that Minnesota has no nonattainment areas for the 2008 ozone, 2010 SO_2, 2010 NO_2, and 2012 $PM_{2.5}$ NAAQS.

Response 17: EPA disagrees with Sierra Club's statement that EPA must disapprove the submitted infrastructure SIPs due to Minnesota's failure to address section 110(a)(2)(D)(i)(I). In EPA's NPR proposing to approve Minnesota's infrastructure SIP for the 2008 ozone, 2010 SO_2, 2010 NO_2, and 2012 $PM_{2.5}$ NAAQS, EPA clearly stated that it was not taking any final action with respect to the good neighbor provision in section 110(a)(2)(D)(i)(I) which addresses emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state for the 2008 ozone, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. Minnesota did not make a SIP submission to address the requirements of section 110(a)(2)(D)(i)(I) for the 2008 ozone, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS, and thus there is no such submission upon which EPA could take action under section 110(k) of the CAA. EPA cannot act under section 110(k) to disapprove a SIP submission that has not been submitted to EPA. EPA also disagrees with the commenter that EPA cannot approve an infrastructure SIP submission without the good neighbor provision. EPA additionally believes there is no basis for the contention that EPA has triggered its obligation to issue a FIP addressing the good neighbor obligation under section 110(c), as EPA has neither found that Minnesota failed to timely submit a required 110(a)(2)(D)(i)(I) SIP submission as to the 2008 ozone, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS or made such a submission that was incomplete, nor has EPA disapproved a SIP submission addressing 110(a)(2)(D)(i)(I) with respect to the 2008 ozone, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS.

EPA acknowledges the commenter's concern for the interstate transport of air pollutants and agrees in general with 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 Minnesota's infrastructure SIP submission for the various 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 each 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 Minnesota had made a SIP submission for section 110(a)(2)(D)(i)(I) of the CAA for the 2008 ozone, 2010 SO_2, and 2012 $PM_{2.5}$ 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 our interpretation that we 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 Minnesota's June 12, 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 Minnesota's obligations under section 110(a)(2)(D)(i)(I) until EPA first either finds Minnesota failed to make the required submission addressing the element or the State 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 Minnesota to address 110(a)(2)(D)(i)(I) at this time.

Sierra Club claims that Minnesota may not rely on the absence of nonattainment areas within the state, a FIP for PSD, or an approved nonattainment NSR permitting program when determining that Minnesota is not contributing to nonattainment or interference with maintenance of the NAAQS in downwind states. In fact, EPA is not taking action on 110(a)(2)(D)(i)(I) at this time for the 2008 ozone, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS, and therefore these comments are not relevant to this rulemaking. EPA is indeed addressing the transport provisions of Minnesota's infrastructure SIP for the 2010 NO_2 NAAQS, but here EPA is making this determination in part because no state has a nonattainment area for the 2010 NO_2 NAAQS, and it is impossible for any state to contribute to nonattainment when no nonattainment areas actually exist. Sierra Club's comments are not relevant for a NAAQS with no nonattainment areas in any state.

Comment 18: The commenter contends that Minnesota does not have the adequate personnel, funding, and authority, required by section 110(a)(2)(E) of the CAA, to properly implement the SIP, shown by overdue permits and improper reissuing of expired permits. The commenter contends that permits for the Taconite Harbor Plant and Boswell Plant have expired, and this may allow these plants to ''exceed the 2010 SO_2 NAAQS.''

Response 18: EPA disagrees that the issue raised by the commenter implies that MPCA does not meet the criteria of section 110(a)(2)(E). Although title V programs are not a component of the SIP, EPA fully approved Minnesota's title V program on December 4, 2001 (66 FR 62967). Minnesota has funding for its program through title V fees, and has the authority to implement the programs though a number of state rules to implement 40 CFR part 70, and dedicated staff for implementation of their title V program.

Comment 19: Sierra Club alleges that section 110(a)(2)(J) of the CAA requires states to provide for public notification of exceedances of the NAAQS. Sierra Club further asserts that section 110(a)(2)(J) requires states to satisfy section 127 of the CAA, which mandates that each SIP must contain provisions for notifying the public of instances or areas of primary NAAQS exceedances, and additionally advise the public of associated health hazards. Sierra Club further alleges that Minnesota's SIP cites provisions that in fact do not require public notification procedures. Sierra Club notes that Minnesota's infrastructure SIP states that a portion of the MPCA Web site is dedicated to enhancing public awareness of measures that can be taken to prevent exceedances for the NAAQS.

Response 19: Sierra Club correctly notes that 110(a)(2)(J) of the CAA requires states to satisfy the requirements of section 127 of the CAA. Section 127 requires a state's infrastructure SIP to contain measures allowing the state to notify the public upon the exceedance of a NAAQS, to advise the public of the health hazards, and to enhance public awareness. The CAA, which was last amended in 1990, further states that ''[s]uch measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio, or press notices or information.'' Here in the year 2015, Minnesota has a Web site. This Web site contains much more information than, for example, a warning sign on a highway. MPCA's Web site allows Minnesotans to learn about air quality issues, view a current air quality index, review reports to the legislature, and access air quality alerts for ozone. As Sierra Club noted, MPCA submitted a link to this Web site as part of its infrastructure SIP. The Web site does contain sections dedicated to enhancing public awareness of measures that can be taken to prevent exceedances for the NAAQS. EPA believes Minnesota has fully satisfied its public notification requirements under section 110(a)(2)(J) of the CAA.

Comment 20: Sierra Club asserts that EPA must disapprove Minnesota's infrastructure SIP because it does not address the visibility protection provisions of section 110(a)(2)(J).

Response 20: The visibility requirements in part C of the CAA that are referenced in section 110(a)(2)(J) are not affected by the establishment or revision of a NAAQS. As a result, there are no ''applicable'' visibility protection obligations associated with the promulgation of a new or revised NAAQS. Because there are no applicable requirements, states are not required to address section 110(a)(2)(J) in their infrastructure SIP.

III. What action is EPA taking?

EPA is taking final action to approve most elements of submissions from Minnesota certifying that its current SIP is sufficient to meet the required infrastructure elements under section 110(a)(1) and (2) for the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. We are also disapproving some elements of the state's submission as they relate to its PSD program. As described above, Minnesota already administers Federally promulgated PSD regulations through delegation, and therefore no practical effect is associated with this disapproval of those elements.

The proposed rulemaking associated with this final action was published on June 26, 2015 (75 FR 36743), and EPA received one comment during the comment period, which ended on July 27, 2015. For the reasons discussed in the proposed rulemaking and in the above response to the public comment, EPA is therefore taking final action to approve most elements and disapprove certain elements, as proposed, of Minnesota's submissions. EPA's actions for the state's satisfaction of infrastructure SIP requirements, 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	D	D	D	D
(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.	D	D	D	D
(D)4—II Prong 4: Interstate transport—protect visibility	NA	NA	NA	NA
(D)5—Interstate and international pollution abatement	D	D	D	D
(E)1—Adequate resources	A	A	A	A
(E)2—State board requirements	NA	NA	NA	NA
(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	D	D	D	D
(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.
D	Disapprove.
NA	No Action/Separate Rulemaking.
*	Not germane to infrastructure SIPs.

VI. 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 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 21, 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 § 52.1220, 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 2010 sulfur dioxide (SO_2) NAAQS,'' and ''Section 110(a)(2) Infrastructure Requirements for the 2012 fine particulate matter ($PM_{2.5}$) NAAQS'' to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Comments
*	*	*	* *	* *
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS.	Statewide	6/12/2014 (submittal date).	10/20/2015, [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), the visibility portion of (D)(i)(II), or the state board requirements of (E)(ii). We will address these requirements in a separate action. EPA is disapproving the elements related to the prevention of significant deterioration, specifically as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Comments
Section 110(a)(2) Infrastructure Requirements for the 2010 nitrogen dioxide (NO_2) NAAQS.	Statewide	6/12/2014 (submittal date).	10/20/2015, [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) or the state board requirements of (E)(ii). We will address these requirements in a separate action. EPA is disapproving the elements related to the prevention of significant deterioration, specifically as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.
Section 110(a)(2) Infrastructure Requirements for the 2010 sulfur dioxide (SO_2) NAAQS.	Statewide	6/12/2014 (submittal date).	10/20/2015, [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), the visibility portion of (D)(i)(II), or the state board requirements of (E)(ii). We will address these requirements in a separate action. EPA is disapproving the elements related to the prevention of significant deterioration, specifically as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.
Section 110(a)(2) Infrastructure Requirements for the 2012 fine particulate matter ($PM_{2.5}$) NAAQS.	Statewide	6/12/2014 (submittal date).	10/20/2015, [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), the visibility portion of (D)(i)(II), or the state board requirements of (E)(ii). We will address these requirements in a separate action. EPA is disapproving the elements related to the prevention of significant deterioration, specifically as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–RO5–OAR–2014–0657; FRL–9935–63–Region 5]

Air Plan Approval; Michigan; 2006 $PM_{2.5}$ and 2008 Lead NAAQS State Board Infrastructure SIP Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of state implementation plan (SIP) submissions from Michigan regarding state board requirements of section 110 of the Clean Air Act (CAA) for the 2006 fine particulate matter ($PM_{2.5}$) and 2008 lead 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 state's responsibilities under the CAA.

DATES: This direct final rule will be effective December 21, 2015, unless EPA receives adverse comments by November 19, 2015. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0657 by one of the following methods:

1. *www.regulations.gov:* Follow the online instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted