SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve the visibility transport (prong 4) portions of revisions to the Tennessee State Implementation Plan (SIP), submitted by the Tennessee Department of Environment and Conservation (TDEC), addressing the Clean Air Act (CAA or Act) infrastructure SIP requirements for the 2010 1-hour Nitrogen Dioxide (NO2), 2010 1-hour Sulfur Dioxide (SO2), and 2012 annual Fine Particulate Matter (PM2.5) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an “infrastructure SIP.” Specifically, EPA is proposing to conditionally approve the prong 4 portions of Tennessee’s March 13, 2014, 2010 1-hour NO2 and 2010 1-hour SO2 infrastructure SIP submission and December 16, 2015, 2012 annual PM2.5 infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

DATES: Comments must be received on or before April 3, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0748 at http://www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached by telephone at (404) 562–9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the state and analytical tools available to the state, as well as the provisions already contained in the state’s implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

Through this action, EPA is proposing to conditionally approve the prong 4 portions of Tennessee’s infrastructure SIP submissions for the 2010 1-hour NO2, 2010 1-hour SO2, and 2012 annual PM2.5 NAAQS. All other applicable infrastructure SIP requirements for these SIP submissions have been or will be addressed in separate rulemakings. A brief background regarding the NAAQS relevant to today’s proposal is provided below. For comprehensive information on these NAAQS, please refer to the Federal Register notices cited in the following subsections.

a. 2010 1-hour NO2 NAAQS

On January 22, 2010, EPA established a new 1-hour primary NAAQS for NO2 at a level of 100 parts per billion, based
on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. See 75 FR 6474 (February 9, 2010). States were required to submit infrastructure SIP submissions for the 2010 1-hour NO\textsubscript{2} NAAQS to EPA no later than January 22, 2013. For the 2010 1-hour NO\textsubscript{2} NAAQS, this proposed action only addresses the prong 4 element of Tennessee’s infrastructure SIP submission received on March 13, 2014. EPA has taken action on the remainder of Tennessee’s March 13, 2014, SIP submission through separate rulemakings.

\textbf{b. 2010 1-Hour SO\textsubscript{2} NAAQS}

On June 2, 2010, EPA revised the primary SO\textsubscript{2} NAAQS to an hourly standard of 75 parts per billion based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. See 75 FR 35520 (June 22, 2010). States were required to submit infrastructure SIP submissions for the 2010 1-hour SO\textsubscript{2} NAAQS to EPA no later than June 2, 2013. For the 2010 1-hour SO\textsubscript{2} NAAQS, this proposed action only addresses the prong 4 element of Tennessee’s infrastructure SIP submission received on March 13, 2014. EPA has taken action on the remainder of Tennessee’s March 13, 2014, SIP submission through separate rulemakings.

\textbf{c. 2012 Annual PM\textsubscript{2.5} NAAQS}

On December 14, 2012, EPA revised the primary annual PM\textsubscript{2.5} NAAQS to 12 micrograms per cubic meter (\textmu g/m\textsuperscript{3}) based on a 3-year average of the annual average PM\textsubscript{2.5} concentrations. See 78 FR 3086 (January 15, 2013). States were required to submit infrastructure SIP submissions for the 2012 PM\textsubscript{2.5} NAAQS to EPA no later than December 14, 2015. For the 2012 annual PM\textsubscript{2.5} NAAQS, this proposed action only addresses the prong 4 element of Tennessee’s infrastructure SIP submission received on December 16, 2015. Several of the other infrastructure elements of Tennessee’s December 16, 2015, SIP submission have been addressed through a separate rulemaking and the remaining elements will be addressed in a future rulemaking.

\section*{II. What is EPA’s approach to the review of infrastructure SIP submissions?}

The requirement for states to make a SIP submission of this type arises out of section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “each such plan” submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of 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 “nonattainment SIP” or “attainment plan SIP” submissions to address the nonattainment planning requirements of part D of Title I of the CAA, “regional haze SIP” submissions required by EPA rule to address the visibility protection requirements of section 169A of the CAA, and nonattainment new source review permit program submissions to address the permit requirements of CAA, Title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions. EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that “each” SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of Title I of the CAA, which specifically address nonattainment SIP requirements. Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator determines the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years or in some cases three years, for such designations to be promulgated. This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within section 110(a)(1) and (2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit “a plan” to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the requirements of part D of Title I, EPA must look to the more specific requirements of section 110(a)(2) to determine what this particular type of SIP submission must include.

\textsuperscript{2}See, e.g., “Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO\textsubscript{x} SIP Call; Final Rule.” 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

\textsuperscript{3}EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.
infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action. Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission. Ambiguities within section 110(a)(1) and (2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states’ attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, because the content and scope of a state’s infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires attainment plan SIP submissions required by part D to meet the “applicable requirements” of section 110(a)(2); thus, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(ii) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of Title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA most recently issued guidance for infrastructure SIPs on September 13, 2013. (Proposed Rules)
Section 128 are necessarily included in EPA’s evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA’s review of infrastructure SIP submissions with respect to the PSD program requirements in section 110(a)(2)(C), (D)(ii)(I), and (I) focuses upon the structural PSD program requirements contained in part C and EPA’s PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including Greenhouse Gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA’s regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit infrastructure SIP submissions with respect to the PM2.5 NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA’s review of a state’s infrastructure SIP submission focuses on assuring that the state’s SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state’s existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA’s regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state’s infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state’s existing SIP. These issues include: (I) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) 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 may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; 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). Thus, EPA believes that it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.13 It is important to note that EPA’s approval of a state’s infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA’s approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in section 110(a)(2) as requiring review of each and every provision of a state’s existing SIP-requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of “implementation, maintenance, and enforcement” of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA’s 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(ii)(I), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(ii)(I).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of section 110(a)(1) and (2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a “SIP call” whenever the Agency determines that a state’s SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.12 Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.13

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10 Subsequent to issuing the 2013 Guidance, EPA’s interpretation of the CAA with respect to the approvalability of affirmative defense provisions in SIPs has changed. See “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs: Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” 80 FR 33839 (June 12, 2015). As a result, EPA’s 2013 Guidance (p. 21 & n.30) no longer represents the EPA’s view concerning the validity of affirmative defense provisions, in light of the requirements of sections 110 and section 304.

11 By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption or affirmative defense for excess emissions during startup, shutdown, and malfunction, EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

12 For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See “Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,” 74 FR 21639 (April 18, 2011).

13 EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emission-Sources in State Implementation Plans; Final Rule,” 75 FR 82536 (December 30, 2010). EPA has previously used its authority under section 110(k)(6) of the CAA to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 2, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to Washington SIP).
Significantly, EPA’s determination that an action on a state’s infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA’s subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director’s discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.14

III. What are the Prong 4 requirements?

Section 110(a)(2)(D)(i)(II) requires a state’s implementation plan to contain provisions prohibiting sources in that state from emitting pollutants in amounts that interfere with any other state’s efforts to protect visibility under part C of the CAA (which includes sections 169A and 169B). The 2013 Guidance states that these prong 4 requirements can be satisfied by approved SIP provisions that EPA has found to adequately address any contribution of that state’s sources to impacts on visibility program requirements in other states. The 2013 Guidance also states that EPA interprets this prong to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.

The 2013 Guidance lays out two ways in which a state’s infrastructure SIP may satisfy prong 4. The first way is through an air agency’s confirmation in its infrastructure SIP submission that it has an EPA-approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. 40 CFR 51.308 and 51.309 specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully approved regional haze SIP will ensure that emissions from sources under an air agency’s jurisdiction are not interfering with measures required to be included in other air agencies’ plans to protect visibility.

Alternatively, in the absence of a fully approved regional haze SIP, a state may meet the requirements of prong 4 through a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other agencies’ plans to protect visibility. Such an infrastructure SIP submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions conform with any mutually agreed regional haze reasonable progress goals for mandatory Class I areas in other states.

IV. What is EPA’s analysis of how Tennessee addressed Prong 4?

Tennessee’s March 13, 2014, 2010 1-hour NO\textsubscript{2} and 2010 1-hour SO\textsubscript{2} submission cites to the State’s regional haze SIP and Clean Air Interstate Rule (CAIR) SIP as satisfying prong 4 requirements.15 In its December 16, 2015, 2012 annual PM\textsubscript{2.5} submission, the State notes that it is developing a regional haze SIP revision with the intent to obtain a fully approved regional haze SIP and that Tennessee’s SIP will be adequate with regard to prong 4 if EPA approves that revision. As explained below, EPA has not yet fully approved Tennessee’s existing regional haze SIP because the SIP relies on CAIR to satisfy the nitrogen oxides (NO\textsubscript{x}) and SO\textsubscript{2} Best Available Retrofit Technology (BART) requirements for the CAIR-subject electric generating units (EGUs) in the State and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals.16 EPA demonstrated that CAIR achieved greater reasonable progress toward the national visibility goal than BART for NO\textsubscript{x} and SO\textsubscript{2} at BART-eligible EGUs in CAIR-affected states, and revised the regional haze rule to provide

14 See, e.g., EPA’s disapproval of a SIP submission from Colorado on the grounds that it would have included a director’s discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director’s discretion provisions); 76 FR 6540 (January 26, 2011) (final disapproval of such provisions).

15 In its March 13, 2014, submission, Tennessee states that its regional haze SIP and its “CAIR SIP are sufficient to ensure emissions within its jurisdiction do not interfere with other agencies’ plans to protect visibility.” However, as Tennessee notes in its submittal, a state’s infrastructure SIP submission can satisfy prong 4 solely through confirmation that the state has a fully approved regional haze SIP.

16 CAIR, promulgated in 2005, required 27 states and the District of Columbia to reduce emissions of NO\textsubscript{x} and SO\textsubscript{2} that significantly contribute to, or interfere with maintenance of, the 1997 NAAQS for fine particulates and/or ozone in any downwind state. CAIR imposed specific emission reduction requirements on each affected State, and established several EPA-administered cap and trade programs for EGUs that States could join as a means to meet these requirements.
Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. EME Homer City Generation, L.P. v. EPA, 795 F.3d 118 (D.C. Cir. 2015). EPA began implementation of CSAPR, which replaced CAIR, on January 1, 2015. Therefore, Tennessee cannot rely on CAIR to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals.

As mentioned above, a state may meet the requirements of prong 4 without a fully approved regional haze SIP by showing that its SIP contains adequate provisions to prevent emissions from within the state from interfering with other states’ measures to protect visibility. Tennessee did not, however, provide a demonstration in any of the infrastructure SIP submissions subject to this proposed action that emissions within its jurisdiction do not interfere with other states’ plans to protect visibility.

As discussed above, Tennessee does not have a fully approved regional haze SIP that meets the requirements of 40 CFR 51.308 and has not otherwise shown that its SIP contains adequate provisions to prevent emissions from within the state from interfering with other states’ measures to protect visibility. Therefore, on December 7, 2016, Tennessee submitted a commitment letter to EPA requesting conditional approval of the prong 4 portions of the aforementioned infrastructure SIP revisions. In this letter, Tennessee commits to submit an infrastructure SIP revision, within one year of final conditional approval, that will satisfy the prong 4 requirements for the 2010 1-hour NO\textsubscript{2} NAAQS, 2010 1-hour SO\textsubscript{2} NAAQS, and 2012 annual PM\textsubscript{2.5} NAAQS through reliance on a fully approved regional haze SIP or through an analysis showing that emissions from sources in Tennessee will not interfere with the attainment of the reasonable progress goals of other states. If the revised infrastructure SIP revision relies on a fully approved regional haze SIP revision to satisfy prong 4 requirements, Tennessee also commits to providing the necessary regional haze SIP revision to EPA within one year of EPA’s final conditional approval.

If Tennessee meets its commitment within one year of final conditional approval, the prong 4 portions of the conditionally approved infrastructure SIP submissions will remain a part of the SIP until EPA takes final action approving or disapproving the new SIP revision(s). However, if the State fails to submit these revisions within the one-year timeframe, the conditional approval will automatically become a disapproval one year from EPA’s final conditional approval and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the FIP requirement under CAA section 110(c).

V. Proposed Action

As described above, EPA is proposing to conditionally approve the prong 4 portions of Tennessee’s March 13, 2014, 2010 1-hour NO\textsubscript{2} and 2010 1-hour SO\textsubscript{2} infrastructure SIP submission and December 16, 2015, 2012 PM\textsubscript{2.5} infrastructure SIP submission. All other outstanding applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

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 Act and applicable federal regulations. See 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 proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under the CAA. Accordingly, this proposed action 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 57629, February 16, 1994).
- does not provide EPA with the

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, Volatile organic compounds.

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


Kenneth R. Lapierre,
Acting Regional Administrator, Region 4.

[FR Doc. 2017–04009 Filed 3–1–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 320


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

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


Kenneth R. Lapierre,
Acting Regional Administrator, Region 4.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 320


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

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


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