



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2016-0060, FRL-9942-52-Region 2]

Approval of Air Quality Implementation Plans; Puerto Rico; Infrastructure Requirements for the 1997 and 2008 Ozone, 1997 and 2006 Fine Particulate Matter and 2008 Lead NAAQS.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve most elements of the five State Implementation Plan (SIP) revision submittals from the Commonwealth of Puerto Rico to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 and 2008 ozone, 1997 and 2006 fine particulate matter (PM_{2.5}) and 2008 lead National Ambient Air Quality Standards (NAAQS). The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. In this rulemaking action, EPA is proposing to approve, in accordance with the requirements of the CAA, the infrastructure SIP submissions with the exception of some portions of the submittals addressing Prevention of Significant Deterioration (PSD).

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R02-OAR-**

2016-0060 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The 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. The 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>.

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I. Background

On July 18, 1997, the Environmental Protection Agency (EPA) promulgated a revised national ambient air quality standard (NAAQS or standards) for ozone (62 FR 38856) and a new NAAQS for fine particle matter (PM_{2.5}) (62 FR 38652). The revised ozone NAAQS was based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. The new PM_{2.5} NAAQS established a health-based annual standard of 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) based on a 3-year average of annual mean PM_{2.5} concentrations, and a 24-hour standard of 65 $\mu\text{g}/\text{m}^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations.

On October 17, 2006 (71 FR 61144), effective December 18, 2006, EPA revised the 24-hour average PM_{2.5} primary and secondary NAAQS from 65 $\mu\text{g}/\text{m}^3$ to 35 $\mu\text{g}/\text{m}^3$. As required by section 110(a)(1) of the CAA, the 110(a)(2) submittals were due within three years after promulgation of the revised standard.

On March 27, 2008 (73 FR 16436) EPA strengthened its NAAQS for ground-level ozone, revising the 8-hour primary ozone standard to 0.075 ppm. EPA also strengthened the secondary 8-hour ozone standard to the level of 0.075 ppm making it identical to the revised primary standard.

On November 12, 2008 (73 FR 66964), EPA promulgated a revised NAAQS for lead. The Agency revised the level of the primary lead standard from $1.5 \mu\text{g}/\text{m}^3$ to $0.15 \mu\text{g}/\text{m}^3$. The EPA also revised the secondary NAAQS to $0.15 \mu\text{g}/\text{m}^3$ and made it identical to the revised primary standard.

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned earlier, these requirements include basic SIP elements such as requirements for monitoring, basic program

requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

II. Summary of State Submittals

The Commonwealth of Puerto Rico through the Commonwealth of Puerto Rico Environmental Quality Board (PREQB) submitted five revisions to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the five different NAAQS. On November 29, 2006, PREQB submitted SIP revisions addressing the infrastructure requirements for the 1997 ozone and PM_{2.5} NAAQS. On January 22, 2013 and April 16, 2015, PREQB submitted SIP revisions addressing the infrastructure requirements for the 2006 PM_{2.5} and 2008 ozone NAAQS, and supplemented the November 2006 submittal for the 1997 ozone and PM_{2.5} NAAQS. On January 31, 2013, PREQB submitted SIP revisions addressing the infrastructure requirements for the 2008 lead NAAQS. On February 1, 2016, PREQB submitted additional provisions for inclusion into the SIP which address infrastructure SIP requirements for 1997 and 2008 ozone, 1997 and 2006 PM_{2.5} and 2008 lead NAAQS. Each of the infrastructure SIP revisions addressed the following infrastructure elements for the applicable NAAQS which EPA is proposing to approve pursuant to section 110(a)(2) of the CAA. Specifically sections 110(a)(2)(A), (B), portions of (C), portions of (D), (E), (F), (G), (H), portions of (J), (K), (L), and (M) for the 1997 and 2008 ozone, 1997 and 2006 PM_{2.5} and 2008 lead NAAQS.

III. EPA's Approach to Review Infrastructure SIPs

EPA is acting upon Puerto Rico's SIP submissions that address the infrastructure requirements of

section 110(a)(1) and (2) of the CAA for the 1997 and 2008 ozone, 1997 and 2006 PM_{2.5} and 2008 lead NAAQS. 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 302(d) of the CAA includes the Commonwealth of Puerto Rico in the definition of the term “State.” 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.¹ 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.² Section 110(a)(2)(I) pertains to nonattainment SIP

¹ For example: section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; Section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of Title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

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_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)).

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 promulgates 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.³ 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 infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.⁴ Similarly, EPA interprets the

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.

⁴ *See, e.g.*, “Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,” 78 FR 4339 (January 22, 2013) (EPA’s final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA’s 2008 PM_{2.5} NSR rule), and “Approval and Promulgation of Air Quality Implementation Plans; New Mexico;

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.⁵

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.⁶

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

Infrastructure and Interstate Transport Requirements for the 2006 PM_{2.5} NAAQS," 78 FR 4337 (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 PM_{2.5} NAAQS).

⁵ On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

⁶ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

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)(i) 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.⁷ EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).⁸ EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.⁹ The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). EPA interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

⁷ EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

⁸ “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” Memorandum from Stephen D. Page, September 13, 2013.

⁹ EPA’s September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address Section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state’s CAA obligations.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.*, whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of 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)(i)(II), and (J) 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 Green House 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 applications with respect to the $PM_{2.5}$ 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 new 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 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.¹⁰ 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 against all 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

¹⁰ 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 for excess emissions during SSM events, then 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.

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)(i)(II), 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)(i)(II).

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.¹¹ Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.¹² Significantly, EPA's determination that an action on a state's infrastructure SIP

¹¹ 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).

¹² 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

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.¹³

IV. Summary of EPA's Rationale for Proposing Approval and Disapproval

In this rulemaking action, EPA is proposing approval of Puerto Rico's infrastructure SIP submittals for the 1997 and 2008 ozone, 1997 and 2006 PM_{2.5} and 2008 lead NAAQS as addressing requirements in section 110(a)(2)(A), (B), (C) (with the exception of program requirements for PSD), (D)(i)(with the exception of program requirements related to PSD), (D)(ii) (with the exception of program requirements related to PSD), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M) of the CAA.

On February 1, 2016, PREQB submitted rules from the Commonwealth of Puerto Rico Statutes,

Emitting-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 25, 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 California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

¹³ *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 4540 (January 26, 2011) (final disapproval of such provisions).

"Environmental Public Policy Act," Act No. 416 (2004, as amended), Section 7.A, and Section 7.D and "Puerto Rico Government Ethics Law," Act. No 1 (approved January 3, 2012), Section 5, for incorporation into the SIP to address the requirements of Sections 110(a)(2)(E)(ii) and 128 of the CAA. Among other things, these collective provisions prohibit members of the Commonwealth's Environmental Quality Board from having any "conflicts of interests that might interfere with the discharge their offices," and require disclosure of potential conflicts of interest. EPA is proposing to approve these submissions, which are intended to apply to any person subject to CAA 128, for inclusion into the SIP as meeting CAA obligations under section 110(a)(2)(E)(ii) for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 lead, and 2008 ozone NAAQS.

EPA Region 2 is the permitting authority for Puerto Rico's PSD Major Source Program. The sources affected by PSD Program are subject to the Federal Implementation Plan PSD control requirements in 40 CFR Sections 52.21. Puerto Rico does not have its own state adopted PSD program, its infrastructure submission is not approvable with respect to this element. Therefore, EPA is disapproving the following infrastructure SIP elements as they relate to the PSD program for lack of a State adopted PSD rule to satisfy section 110(a)(2) for the 1997 and 2008 ozone, 1997 and 2006 PM_{2.5}, and 2008 lead NAAQS: sections 110(a)(2)(C), (D)(i) prong 3, (D)(ii) and (J). It should be noted that a FIP clock will not be started because a PSD FIP is currently in place, and sanctions will not be triggered.

Section 110(a)(2)(J) requires SIPs to meet applicable requirements of part C of the CAA related

to visibility. Puerto Rico's submittal does not address the visibility portion of J, including submission of any visibility measures under this sub-element. As indicated in EPA's September 2013 Infrastructure Guidance, although states are subject to visibility and regional haze program requirements under part C, the visibility and regional haze program requirements under part C do not change due to promulgation of, or revision to, a NAAQS. The SIP is not required to be revised with respect to visibility protection since there are no new visibility obligations. Accordingly, air agencies do not need to address the visibility sub-element of section 110(a)(2)(J) in infrastructure SIP submissions. Since Puerto Rico did not make a submission addressing the visibility portion of (J), action on this sub-element is not applicable.

EPA is not acting on section 110(a)(2)(I), plan revisions for nonattainment areas. Specific SIP submissions for nonattainment areas, as required under CAA title I part D, are subject to a different submission schedule¹⁴ than those for section 110 infrastructure elements and are reviewed and acted upon under a separate process.

A detailed analysis of EPA's review and rationale for proposing to approve and disapprove elements of the infrastructure SIP submittals as addressing these CAA requirements may be found in the Technical Support Document (TSD) for this proposed rulemaking action which is available on line at www.regulations.gov, Docket ID Number **EPA-R02-OAR-2016-0060**.

¹⁴ These elements are typically referred to as nonattainment SIP or attainment plan elements and are due by the dates prescribed under subparts 2 through 5 of part D.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Proposed Action

EPA is proposing to approve Puerto Rico's infrastructure submittals dated November 29, 2006, January 22 and 31, 2013, April 16, 2005 and February 1, 2016, for the 1997 and 2008 ozone, 1997 and 2006 PM_{2.5} and 2008 lead NAAQS, respectively, as meeting the requirements of section 110(a)(2) of the CAA, including specifically section 110(a)(2)(A), (B), (C)(with the exception of program requirements for PSD), (D)(i)(with the exception of program requirements related to PSD), (D)(ii) (with the exception of program requirements related to PSD), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

EPA is proposing to incorporate the Commonwealth of Puerto Rico's "Environmental Public Policy Act", Act No. 416 (2004, as amended), Section 7.A, and Section 7.D and the "Puerto Rico Government Ethics Law," Act. No 1 (approved January 3, 2012), Section 5, for inclusion into Puerto Rico's SIP to address the requirements of Sections 110(a)(2)(E)(ii) and 128 of the CAA.

EPA is further proposing to approve these submissions, which are intended to apply to any person subject to CAA 128, for inclusion into the SIP as meeting CAA obligations section 110(a)(2)(E)(ii) for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 lead, and 2008 ozone NAAQS.

EPA is disapproving the following infrastructure SIP requirements as they relate to the PSD program for lack of a State adopted PSD rule to satisfy section 110(a)(2) for the 1997 and 2008

ozone NAAQS, 1997 and 2006 PM_{2.5} NAAQS, and 2008 lead NAAQS: sections 110(a)(2)(C), (D)(i) prong 3, (D)(ii) and (J). It should be noted that a FIP clock will not be started because a PSD FIP is currently in place, and sanctions will not be triggered. Since Puerto Rico is not required to address the visibility portion of section 110(a)(2)(J) in the context of an infrastructure SIP, and therefore did not make a submission, action on this sub-element is not applicable.

VI. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Puerto Rico's "Environmental Public Policy Act," Act No. 416 (2004, as amended), Section 7.A, and Section 7.D and "Puerto Rico Government Ethics Law," Act. No 1 (approved January 3, 2012), Section 5. These provisions are intended to apply to any person subject to CAA Section 128. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations> (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. 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 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 Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking action, pertaining to Puerto Rico's section 110(a)(2) infrastructure requirements for the 1997 and 2008 ozone NAAQS, 1997 and 2006 PM_{2.5} NAAQS, and 2008 lead NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Dioxide, Intergovernmental Relations, Lead, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur Oxides, Volatile Organic Compounds.

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

February 9, 2016

Dated:

Judith A. Enck,
Regional Administrator,
Region 2.

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