



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2019-0642; FRL-10007-61-Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; South Dakota; Revisions to the Administrative Rules of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 1, 2015, the Environmental Protection Agency (EPA) promulgated the 2015 ozone NAAQS, revising the standard to 0.070 parts per million. Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, the Clean Air Act (CAA or Act) requires each state to submit a State Implementation Plan (SIP) revision for the implementation, maintenance, and enforcement of the new standard. This submission is commonly referred to as an infrastructure SIP. In this action we are proposing to approve the State of South Dakota's January 15, 2020 SIP submission that addresses infrastructure requirements for the 2015 ozone NAAQS. Additionally, in this action, we are proposing to approve a SIP revision submitted by the State of South Dakota on January 3, 2020 that revises the Administrative Rules of South Dakota (ARSD), Air Pollution Control Program, updating the date of incorporation by reference of federal rules in ARSD chapters pertaining to definitions, ambient air quality, air quality episodes, prevention of significant deterioration (PSD), new source review, performance testing, control of visible emissions, continuous emission monitoring

systems, State facilities in Rapid City area, construction permits and regional haze program administrative rules.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2019-0642, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.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>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado

80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kate Gregory, (303) 312-6175, gregory.kate@epa.gov. Mail can be directed to the Air and Radiation Division, U.S. EPA, Region 8, Mail-code 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado, 80202-1129.

SUPPLEMENTARY INFORMATION: Throughout this document, “reviewing authority,” “we,” “us,” and “our” refer to the EPA.

I. Background

On March 12, 2008, the EPA promulgated a new NAAQS for ozone, revising the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). More recently, on October 1, 2015, the EPA promulgated and revised the NAAQS for ozone, further strengthening the primary and secondary 8-hour standards to 0.070 ppm (80 FR 65292). The October 1, 2015 standards are known as the 2015 ozone NAAQS.

Under sections 110(a)(1) and (2) of the CAA, after the promulgation of a new or revised NAAQS states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that the existing SIPs already meet those requirements. The EPA highlighted this statutory requirement in an October 2, 2007 guidance document entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards” (2007 Memo). On September 25, 2009, the EPA

issued an additional guidance document pertaining to the 2006 PM_{2.5} NAAQS entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)” (2009 Memo), followed by the October 14, 2011 “Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)” (2011 Memo). Most recently, the EPA issued “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)” on September 13, 2013 (2013 Memo).

A. What Infrastructure Elements are Required Under Sections 110(a)(1) and (2)?

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.

- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements for South Dakota is contained in section III of this document. Additionally, we are proposing to approve revisions to the ARSD submitted by the State of South Dakota on January 3, 2020.

B. How Did the State Address the Infrastructure Elements of Sections 110(a)(1) and (2)?

The South Dakota 2015 ozone NAAQS infrastructure SIP submissions demonstrates how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2015 ozone NAAQS. The State submittal is available within the electronic docket for today's proposed action at www.regulations.gov.

The South Dakota Department of Environment and Natural Resources (DENR) submitted a certification of South Dakota's infrastructure SIP for the 2015 ozone NAAQS on January 15, 2020. The State's submission references the ARSD and the South Dakota Codified Laws (SDCL). The ARSD and SDCL referenced in the submittals are publicly available at <http://sdlegislature.gov/Rules/RulesList.aspx> and http://sdlegislature.gov/Statutes/Codified_Laws/default.aspx. South Dakota's approved SIP can be found at 40 CFR 52.2170.

II. What is the scope of this proposed rule?

The EPA is acting upon the SIP submission from South Dakota that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA 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.

Whenever the EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA finds that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.¹ Unless otherwise noted

¹ The EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including the EPA’s prior action on South Dakota’s infrastructure SIP to address 1997 and 2006 PM_{2.5}, 2008 Lead, 2008 Ozone, and 2010 NO₂ NAAQS (79 FR 71040, (December 1, 2014)).

below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.² The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

III. The EPA's Evaluation of the State Submittals

A. CAA Section 110(a)(2)(A): Emission Limits and Other Control Measures

Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the Act.

(i) The State's submission:

Multiple SIP-approved ARSD cited in South Dakota's certification provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2015 NAAQS, subject to the following clarifications.

(ii) The EPA's analysis:

The EPA does not consider the SIP requirements triggered by the nonattainment area mandates in part D of Title 1 of the CAA to be governed by the submission deadline of section 110(a)(1). Furthermore, South Dakota has no areas designated as nonattainment for the 2015 ozone NAAQS. South Dakota's certification (contained within this docket) generally listed

² See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (August 30, 2018).

provisions within its SIP which regulate pollutants through various programs, including major or minor source permit programs. This suffices, in the case of South Dakota, to meet the requirements of section 110(a)(2)(A) for the 2015 ozone NAAQS.

B. CAA Section 110(a)(2)(B): Ambient Air Quality Monitoring/Data System

Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to “(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.”

(i) The State’s submission:

As discussed in South Dakota’s submission, the DENR periodically submits a Quality Management Plan and a Quality Assurance Project Plan to the EPA. These plans cover procedures to monitor and analyze data. As part of the monitoring SIP, South Dakota submits an Annual Monitoring Network Plan (AMNP) each year for the EPA’s approval.

(ii) The EPA’s analysis:

A comprehensive AMNP, intended to fully meet the federal requirements, was submitted to the EPA by South Dakota on July 1, 2019 and subsequently approved by the EPA. South Dakota's SIP-approved regulations, specifically ARSD 74:36:02, provide for the design and operation of its monitoring network, reporting of data obtained from the monitors, and an annual network review including notification to the EPA of any changes, and public notification of exceedances of NAAQS. As described in its submission, South Dakota operates a comprehensive monitoring network, including ozone monitoring, compiles and analyzes collected data, and submits the data to the EPA's Air Quality System on a quarterly basis. Therefore, we are

proposing to approve the South Dakota SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2015 ozone NAAQS.

C. CAA Section 110(a)(2)(C): Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

CAA section 110(a)(2)(C) requires each state to have a program that provides for the following three sub-elements: enforcement; state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the 2015 ozone NAAQS as required by CAA Title I part C (*i.e.*, the major source PSD program).

(i) The State's submission:

The South Dakota submission refers to the following SIP-approved SDCL and ARSD which address and provide for meeting all requirements of CAA section 110(a)(2)(C):

- SDCL 34A-1-39 through 34A-1-54 and 34A-1-62;
- ARSD Chapter 74:36:09 (prevention of significant deterioration); and
- ARSD Chapter 74:36:20 (construction permits for new sources and modifications)

(ii) The EPA's analysis:

With regard to the sub-element requirement of a program providing for enforcement of all SIP measures, we are proposing to find that South Dakota's regulations provide broad authority to allow the State to enforce applicable laws, regulations, and standards; to seek injunctive relief; and to provide authority to prevent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with PSD requirements. The ARSD regulations above address South Dakota's program for enforcement of control measures.

Turning to the second sub-element, regulation of new and modified minor sources and minor modifications of major sources, South Dakota has a SIP-approved minor new source review (NSR) program, adopted under section 110(a)(2)(C) of the Act. The State and the EPA have relied on the State's existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting program do not interfere with attainment and maintenance of the NAAQS. We propose to determine that this program regulates construction of new and modified minor sources of ozone precursors for purposes of the 2015 ozone NAAQS.

Lastly, to generally meet the requirements of CAA section 110(a)(2)(C) with regard to the sub-element of preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA Title I part C, a state is required to have PSD, nonattainment NSR (NNSR), and minor NSR permitting programs adequate to implement the 2015 ozone NAAQS. The EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for *all* regulated NSR pollutants. To meet this requirement, South Dakota cited its PSD program codified at ARSD Chapter 74:36:09. We most recently approved revisions to South Dakota's PSD program on September 11, 2019 (84 FR 47887), and we most recently approved revisions to South Dakota's NNSR program on July 26, 2018 (83 FR 29698.) The EPA is proposing to approve South Dakota's infrastructure SIP for the 2015 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a PSD program in the SIP that covers all regulated pollutants including greenhouse gases (GHGs).

In addition to these requirements, there are four other revisions to the South Dakota SIP that are necessary to meet the requirements of infrastructure element 110(a)(2)(C). These four

revisions are related to (1) the Ozone Implementation NSR Update (November 29, 2005, 70 FR 71612); (2) the “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (June 3, 2010, 75 FR 31514); (3) the NSR PM_{2.5} Rule (May 16, 2008, 73 FR 28321); and (4) the final rulemaking entitled “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (75 FR 64864, Oct. 20, 2010).

We approved revisions to South Dakota’s PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated on November 29, 2005 (70 FR 71612). As a result, the approved South Dakota PSD program meets the current requirements for ozone.

With respect to GHGs, on June 23, 2014, the United States Supreme Court addressed the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427 (2014). The Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also held that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, (“anyway” sources)³ contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation v. EPA*, 606 F. App'x. 6, at *7-8 (D.C. Cir. April 10, 2015), issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V

³ See 77 FR 41066 (July 12, 2012) (rulemaking for definition of “anyway” sources).

Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or “anyway sources.” With respect to Step 2 sources, the D.C. Circuit’s amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), “to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.” The EPA subsequently revised our PSD regulations to remove the vacated provisions. 80 FR 50199 (Aug. 19, 2015).

The EPA has subsequently revised our PSD regulations in response to the Court’s decision and the subsequent amended judgment by the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation v. EPA*, 606 F. App’x. 6, at *7-8 (D.C. Cir. April 10, 2015). South Dakota generally incorporates by reference (IBR) the EPA’s PSD regulations found in 40 CFR 52.21. These can be found in the State’s SIP at 74:36:09. We recently approved revisions to update South Dakota’s IBR in 40 CFR 52.21 as of July 1, 2016. Thus, we find that the South Dakota PSD program is consistent with our revised regulations. See 83 FR 296987 (June 26, 2018.) Thus, South Dakota’s PSD program is current with respect to regulation of GHGs.

Finally, we evaluate the PSD program with respect to current requirements for PM_{2.5}. In particular, on May 16, 2008, the EPA promulgated the rule, “Implementation of the New Source

Review Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})” (73 FR 28321) and on October 20, 2010, the EPA promulgated the rule, “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (75 FR 64864). The EPA regards adoption of these PM_{2.5} rules as a necessary requirement when assessing a PSD program for the purposes of element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), remanded the EPA's 2007 and 2008 rules implementing the 1997 PM_{2.5} NAAQS. The Court ordered the EPA to “repromulgate these rules pursuant to Subpart 4 consistent with this opinion.” *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for PM nonattainment areas.

The 2008 implementation rule addressed by the court decision, “Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})” (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of PM_{2.5} in nonattainment areas (NNSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 Implementation rule that address requirements for PM_{2.5} attainment and unclassifiable areas to be affected by the decision. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the court's decision. Accordingly, the EPA's proposed approval of South Dakota's infrastructure SIP for elements C or J with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the NNSR requirements promulgated by the 2008 Implementation rule also does not affect the EPA's action on the present infrastructure action. The EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a NNSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for PM_{2.5} is contained in the EPA's October 20, 2010 rule, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (75 FR 64864). The EPA regards adoption of the PM_{2.5} increments as a necessary requirement when assessing a PSD program for the purposes of element (C). South Dakota generally incorporates by reference (IBR) the EPA's PSD regulations found in 40 CFR 52.21. These can be found in the State's SIP at 74:36:09.

As mentioned above, we are proposing to approve the January 3, 2020 submitted revisions to the ARSD by the State. The State's January 3, 2020 submission includes a revision to ARSD 74:36:09 and proposes an update to the federal reference date to July 1, 2018. Thus, this submitted revision makes South Dakota's PSD program up to date with respect to current requirements for PM_{2.5} and meets current requirements for PM_{2.5}.

The EPA therefore is proposing to approve South Dakota's SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in 74:36:04 of the South Dakota SIP, and was originally approved by the EPA on December 18, 1998 (63 FR 55804). Since approval of the minor NSR program, the State and the EPA have relied on the program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. Therefore, based on the foregoing, the EPA is proposing to fully approve South Dakota's infrastructure SIP for the 2015 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

Therefore, based on the foregoing, the EPA is proposing to approve South Dakota's infrastructure SIP for the 2015 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the enforcement of control measures in the SIP, and the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

D. CAA Section 110(a)(2)(D): Interstate Transport

CAA section 110(a)(2)(D)(i) consists of four separate elements, or “prongs.” CAA section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions prohibiting emissions which will contribute significantly to nonattainment of the NAAQS in any other state (prong 1), and adequate provisions prohibiting emissions which will interfere with maintenance of the NAAQS by any other state (prong 2). CAA section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions prohibiting emissions which will interfere with any other state's required measures to prevent significant deterioration of its air quality (prong 3), and adequate provisions

prohibiting emissions which will interfere with any other state's required measures to protect visibility (prong 4). Under section 110(a)(2)(D)(i)(I) of the CAA, the EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under section 110(a)(2)(D)(i)(i)(I).⁴

With regard to the prong 1 and prong 2 requirements of CAA section 110(a)(2)(D)(i)(I), the EPA has addressed these requirements with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine PM standards, and the CSAPR Update for the 2008 ozone NAAQS (CSAPR Update).⁵ These actions only addressed interstate transport in the Eastern United States⁶ and did not address the 2015 ozone NAAQS.

Through the development and implementation of CSAPR, the CSAPR Update and previous regional rulemakings pursuant to the good neighbor provision,⁷ the EPA, working in partnership with states, developed the following four-step interstate transport framework to address the requirements of the good neighbor provision for the ozone NAAQS:⁸ (1) identify downwind air quality problems; (2) identify upwind states that impact those downwind air quality problems sufficiently such that they are considered “linked” and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), considering cost

⁴ See *North Carolina v. EPA*, 531 F.3d 896, 909-911 (2008).

⁵ See 76 FR 48208 (August 8, 2011) (*i.e.*, CSAPR) and 81 FR 74504 (October 26, 2016) (*i.e.*, CSAPR Update).

⁶ For purposes of the CSAPR and CSAPR Update actions, the Western U.S. (or the West) was considered to consist of the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The Eastern U.S. (or the East) was considered to consist of the 37 states east of the 11 Western states.

⁷ Other regional rulemakings addressing ozone transport include the NO_x SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

⁸ The four-step interstate framework has also been used to address requirements of the good neighbor provision for some previous particulate matter and ozone NAAQS, including in the Western United States. See, *e.g.*, 83 FR 30380 (June 28, 2018) and 83 FR 5375, 5376-77 (February 7, 2018).

and air quality factors, to prevent linked upwind states identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

The EPA has released several documents containing information relevant to evaluating interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) with preliminary interstate ozone transport modeling with projected ozone design values for 2023, on which we requested comment.⁹ The year 2023 was used as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas.¹⁰ On October 27, 2017, we released a memorandum (October 2017 Memo) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA.¹¹ Although the October 2017 Memo released data for a 2023 modeling year, we specifically stated that the modeling may be useful for states developing SIPs to address remaining good neighbor obligations for the 2008 ozone NAAQS but did not address the 2015 ozone NAAQS. And, on March 27, 2018, we issued a memorandum (March 2018 Memo) indicating the same 2023 modeling data released in the October 2017 Memo could also be useful for evaluating potential downwind air quality problems with respect to the 2015 ozone NAAQS (step 1 of the four-step framework).

⁹ See Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

¹⁰ 82 FR 1735 (January 6, 2017).

¹¹ See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in the docket for this action or at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notice>.

The March 2018 Memo included newly available contribution modeling results to assist states in evaluating their impact on potential downwind air quality problems (step 2 of the four-step framework) in their efforts to develop good neighbor SIPs for the 2015 ozone NAAQS to address their interstate transport obligations.¹² The EPA subsequently issued two more memoranda in August and October 2018, providing guidance to states developing good neighbor SIPs for the 2015 NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in step 2 and considerations for identifying downwind areas that may have problems maintaining the standard (under interstate transport prong 2) at step 1 of the framework.¹³

The March 2018 Memo describes the process and results of the updated photochemical and source-apportionment modeling used to project ambient ozone concentrations for the year 2023 and the state-by state impacts on those concentrations. The March 2018 Memo also explains that the selection of the 2023 analytic year aligns with the 2015 NAAQS attainment year for Moderate nonattainment areas. As described in more detail in the October 2017 and March 2018 memoranda, the EPA used the Comprehensive Air Quality Model with Extensions (CAMx version 6.40) to model average and maximum design values in 2023 to identify potential nonattainment and maintenance receptors (*i.e.*, monitoring sites that are projected to have problems attaining or maintaining the 2015 ozone NAAQS). The March 2018 Memo presents

¹² See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018, available in the docket for this action or at <https://www.epa.gov/interstate-air-pollution-transport/memos-and-notice-regarding-interstate-air-pollution-transport>

¹³ See Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018) (“August 2018 memorandum”), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in the docket for this action or at <https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs>.

design values calculated in two ways: first, following the EPA’s historic “3 x 3” approach¹⁴ to evaluating all sites, and second, following a modified approach for coastal monitoring sites in which “overwater” modeling data were not included in the calculation of future year design values (referred to as the “no water” approach).

For purposes of identifying potential nonattainment and maintenance receptors in 2023, the EPA applied the same approach used in the CSAPR Update, wherein the EPA considered a combination of monitoring data and modeling projections to identify monitoring sites that are projected to have problems attaining or maintaining the NAAQS. Specifically, the EPA identified nonattainment receptors as those monitoring sites with measured values¹⁵ exceeding the NAAQS that also have projected (*i.e.*, in 2023) average design values exceeding the NAAQS. The EPA identified maintenance receptors as those monitoring sites with projected maximum design values exceeding the NAAQS. This included sites with measured values below the NAAQS but with projected average and maximum design values exceeding the NAAQS, and monitoring sites with projected average design values below the NAAQS but with projected maximum design values exceeding the NAAQS. The EPA included the design values and monitoring data for all monitoring sites projected to be potential nonattainment or maintenance receptors based on the updated 2023 modeling in Attachment B to the March 2018 Memo.

After identifying potential downwind nonattainment and maintenance receptors, the EPA next performed nationwide, state-level ozone source-apportionment modeling to estimate the

¹⁴ See March 2018 Memo, at 4.

¹⁵ The EPA used 2016 ozone design values, based on 2014 – 2016 measured data, which were the most current data at the time of the analysis. See attachment B of the March 2018 Memo, at B-1.

expected impact from each state to each nonattainment and maintenance receptor.¹⁶ The EPA included contribution information resulting from the source-apportionment modeling in Attachment C to the March 2018 Memo. For more specific information on the modeling and analysis, please see the 2017 and March 2018 memoranda, the NODA for the preliminary interstate transport assessment, and the supporting technical documents included in the docket for this action.

In the CSAPR and the CSAPR Update, the EPA used a threshold of one percent of the NAAQS to determine whether a given upwind state was “linked” at step 2 of the four-step framework and would therefore contribute to downwind nonattainment and maintenance sites identified in step 1. If a state’s impact did not equal or exceed the one percent threshold, the upwind state was not “linked” to a downwind air quality problem, and the EPA therefore concluded the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state’s impact equaled or exceeded the one percent threshold, the state’s emissions were further evaluated in step 3, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the good neighbor provision.

As noted previously, on August 31, 2018, the EPA issued a memorandum (August 2018 Memo) providing guidance concerning potential contribution thresholds that may be appropriate to apply with respect to the 2015 NAAQS in step 2. Consistent with the process for selecting the one percent threshold in CSAPR and the CSAPR Update, the August 2018 Memo included analytical information regarding the degree to which potential air quality thresholds would

¹⁶ As discussed in the March 2018 Memo, the EPA performed source-apportionment model runs for a modeling domain that covers the 48 contiguous United States and the District of Columbia, and adjacent portions of Canada and Mexico.

capture the collective amount of upwind contribution from upwind states to downwind receptors for the 2015 ozone NAAQS. The August 2018 Memo indicated that, based on the EPA's analysis of its most recent modeling data, the amount of upwind collective contribution captured using a 1 ppb threshold is generally comparable, overall, to the amount captured using a threshold equivalent to one percent of the 2015 ozone NAAQS. Accordingly, the EPA indicated that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to the one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS.¹⁷

While the March 2018 Memo presented information regarding the EPA's latest analysis of ozone transport following the approaches the EPA has taken in prior regional rulemaking actions, the EPA has not made any final determinations regarding how states should identify downwind receptors with respect to the 2015 ozone NAAQS at step 1 of the four-step framework. Rather, the EPA noted that states have flexibility in developing their own SIPs to follow different analytical approaches than the EPA's, so long as their chosen approach has an adequate technical justification and is consistent with the requirements of the CAA.

The prong 3 (PSD) requirement of CAA section 110(a)(2)(D)(II) may be met for all NAAQS by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).¹⁸

To meet the prong 4 (visibility) requirement of CAA section 110(a)(2)(D)(i)(II) under the 2015 ozone NAAQS, a SIP must address the potential for interference with visibility protection

¹⁷ See August 2018 Memo, at 4.

¹⁸ See 2013 Memo.

caused by ozone, including precursors. An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies the 110(a)(2)(D)(i)(II) requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. In the absence of a fully approved regional haze SIP, a state can still make a demonstration that satisfies the visibility requirement section of 110(a)(2)(D)(i)(II).¹⁹

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). CAA section 126 requires notification to neighboring states of potential impacts from a new or modified major stationary source and specifies how a state may petition the EPA when a major source or group of stationary sources in a state is thought to contribute to certain pollution problems in another state. CAA section 115 governs the process for addressing air pollutants emitted in the United States that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare in a foreign country.

(i) State's submission:

South Dakota's January 15, 2020 submission includes an interstate transport analysis for prongs 1 and 2 that focused on the modeling information provided in the EPA's March 2018 Memo. South Dakota concludes that the modeling results from the March 2018 Memo indicate that South Dakota sources do not contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

¹⁹ See 2013 Memo. In addition, the EPA approved the visibility requirement of 110(a)(2)(D)(i) for the 1997 Ozone and PM_{2.5} NAAQS for Colorado before taking action on the State's regional haze SIP. 76 FR 22036 (April 20, 2011).

To address prong 3, South Dakota references the PSD program in ARSD Chapters 74:36:09 and 74:36:20 of the South Dakota SIP, which the State asserts meets all federal requirements and applies to all regulated pollutants. South Dakota's submission states that it requires new sources or modifications to existing sources to apply for and obtain an air quality permit before constructing, and the State reviews the application to ensure that the new source or modification will not cause a NAAQS exceedance.

To address prong 4, South Dakota references its EPA-approved Regional Haze SIP to demonstrate that the State does not interfere with visibility for the 2015 ozone NAAQS in any other state (77 FR 24845, April 26, 2012).

To address CAA section 110(a)(2)(D)(ii), South Dakota states that there are no findings against the State under CAA sections 115 or 126 with respect to any pollutant. South Dakota also states that its approved PSD program requires the State to provide written notification to all nearby states and tribes treated as states of the potential impacts from major new sources or major modifications of existing sources, satisfying CAA section 126(a). For these reasons, South Dakota asserts that its SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

(ii) The EPA's Analysis:

Prongs 1 and 2: Significant contribution to nonattainment and interference with maintenance

The EPA is proposing to rely on the 2023 modeling data identifying downwind receptors and upwind state contributions, as released in the March 2018 memorandum, to evaluate South Dakota's good neighbor obligation with respect to the 2015 ozone NAAQS. On September 13, 2019, the D.C. Circuit issued its decision in *Wisconsin v. EPA* addressing legal challenges to the

CSAPR Update, in which the EPA partially addressed certain upwind states' good neighbor obligations for the 2008 ozone NAAQS. 938 F.3d 303. While the court generally upheld the rule as to most of the challenges raised in the litigation, the court remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contributions in accordance with the attainment dates found in CAA section 181 by which downwind states must come into compliance with the NAAQS. *Id.* at 313. In light of the court's decision, the EPA is providing further explanation regarding why it proposes to find that it is appropriate and consistent with the statute – as well as the legal precedent – to use the 2023 analytic year for assessing good neighbor obligations for the 2015 ozone NAAQS.

The EPA believes that 2023 is an appropriate year for analysis of good neighbor obligations for the 2015 ozone NAAQS because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 3, 2024 Moderate area attainment date for the 2015 ozone NAAQS. The EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 ozone NAAQS is August 3, 2021, which currently applies in several downwind nonattainment areas evaluated in the EPA's modeling.²⁰ However, as explained below, the EPA does not believe that either the statute or applicable case law requires the evaluation of good neighbor obligations in a future year aligned with the attainment date for nonattainment areas classified as Marginal.

The good neighbor provision instructs the EPA and states to apply its requirements “consistent with the provisions of” title I of the CAA. CAA section 110(a)(2)(D)(i); *see also*

²⁰ The Marginal area attainment date is not applicable for nonattainment areas already classified as Moderate or higher, such as the New York Metropolitan Area. For the status of all nonattainment areas under the 2015 ozone NAAQS, see U.S. EPA, 8-Hour Ozone (2015) Designated Area/State Information, <https://www3.epa.gov/airquality/greenbook/jbtc.html> (last updated Sept. 30, 2019).

North Carolina v. EPA, 531 F.3d 896, 911–12 (D.C. Cir. 2008). This consistency instruction follows the requirement that plans “contain adequate provisions prohibiting” certain emissions in the good neighbor provision. As the D.C. Circuit held in *North Carolina*, and more recently in *Wisconsin*, the good neighbor provision must be applied in a manner consistent with the designation and planning requirements in title I that apply in downwind states and, in particular, the timeframe within which downwind states are required to implement specific emissions control measures in nonattainment areas and submit plans demonstrating how those areas will attain, relative to the applicable attainment dates. *See North Carolina*, 896 F.3d at 912 (holding that the good neighbor provision’s reference to title I requires consideration of both procedural and substantive provisions in title I); *Wisconsin*, 938 F.3d at 313-18.

While the EPA recognizes, as the court held in *North Carolina* and *Wisconsin*, that upwind emissions-reduction obligations therefore must generally be aligned with downwind receptors’ attainment dates, unique features of the statutory requirements associated with the Marginal area planning requirements and attainment date under CAA section 182 lead the EPA to conclude that it is more reasonable and appropriate to require the alignment of upwind good neighbor obligations with later attainment dates applicable for Moderate or higher classifications. Under the Clean Air Act, states with areas designated nonattainment are generally required to submit, as part of their state implementation plan, an “attainment demonstration” that shows, usually through air quality modeling, how an area will attain the NAAQS by the applicable attainment date. *See* CAA section 172(c)(1).²¹ Such plans must also include, among other things, the adoption of all “reasonably available” control measures on existing sources, a demonstration

²¹ Part D of title I of the Clean Air Act provides the plan requirements for all nonattainment areas. Subpart 1, which includes section 172(c), applies to all nonattainment areas. Congress provided in subparts 2-5 additional requirements specific to the various NAAQS pollutants that nonattainment areas must meet.

of “reasonable further progress” toward attainment, and contingency measures, which are specific controls that will take effect if the area fails to attain by its attainment date or fails to make reasonable further progress toward attainment. *See, e.g.*, CAA section 172(c)(1); 172(c)(2); 172(c)(9). Ozone nonattainment areas classified as Marginal are excepted from these general requirements under the CAA—unlike other areas designated nonattainment under the Act (including for other NAAQS pollutants), Marginal ozone nonattainment areas are specifically exempted from submitting an attainment demonstration and are not required to implement *any* specific emissions controls at existing sources in order to meet the planning requirements applicable to such areas. *See* CAA section 182(a) (“The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area.”)²² Marginal ozone nonattainment areas are also exempted from demonstrating reasonable further progress towards attainment and submitting contingency measures. *See* CAA section 182(a) (does not include a reasonable further progress requirement and specifically notes that “Section [172(c)(9)] of this title (relating to contingency measures) shall not apply to Marginal Areas”).

Existing regulations—either local, state, or federal—are typically a part of the reason why “additional” local controls are not needed to bring Marginal nonattainment areas into attainment. As described in the EPA’s record for its final rule defining area classifications for the 2015 ozone NAAQS and establishing associated attainment dates, history has shown that the

²² States with Marginal nonattainment areas are required to implement new source review permitting for new and modified sources, but the purpose of those requirements is to ensure that potential emissions increases do not interfere with progress towards attainment, as opposed to reducing existing emissions. Moreover, the EPA acknowledges that states within ozone transport regions must implement certain emission control measures at existing sources in accordance with CAA section 184, but those requirements apply regardless of the applicable area designation or classification.

majority of areas classified as Marginal for prior ozone standards attained the respective standards by the Marginal area attainment date (*i.e.*, without being re-classified to a Moderate designation). 83 FR 10376. As part of a historical lookback, the EPA calculated that by the relevant attainment date for areas classified as Marginal, 85 percent of such areas attained the 1979 1-hour ozone NAAQS, and 64 percent attained the 2008 ozone NAAQS. *See* Response to Comments, section A.2.4.²³ Based on these historical data, the EPA expects that many areas classified Marginal for the 2015 ozone NAAQS will also attain by the relevant attainment date as a result of emissions reductions that are already expected to occur through implementation of existing local, state and federal emissions reduction programs. To the extent states have concerns about meeting their attainment date for a Marginal area, the CAA under section 181(b)(3) provides authority for them to voluntarily request a higher classification for individual areas, if needed.

Areas that are classified as Moderate typically have more pronounced air quality problems than Marginal areas or have been unable to attain the NAAQS under the minimal requirements that apply to Marginal areas. *See* CAA sections 181(a)(1) (classifying areas based on the degree of nonattainment relative to the NAAQS) and (b)(2) (providing for reclassification to the next highest designation upon failure to attain the standard by the attainment date). Thus, unlike Marginal areas, the statute explicitly requires a state with an ozone nonattainment area classified as Moderate or higher to develop an attainment plan demonstrating how the state will address the more significant air quality problem, which generally requires the application of various control measures to existing sources of emissions located in the nonattainment area. *See generally* CAA sections 172(c) and 182(b)-(e).

²³ Available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0202-0122>.

Given that downwind states are not required to demonstrate attainment by the attainment date or impose additional controls on existing sources in a Marginal nonattainment area, the EPA believes that it would be inconsistent to interpret the good neighbor provision as requiring the EPA to evaluate the necessity for upwind state emissions reductions based on air quality modeled in a future year aligned with the Marginal area attainment date. Rather, the EPA believes it is more appropriate and consistent with the nonattainment planning provisions in title I to evaluate downwind air quality and upwind state contributions, and, therefore, the necessity for upwind state emissions reductions, in a year aligned with an area classification in connection with which downwind states are also required to demonstrate attainment and implement controls on existing sources—*i.e.*, with the Moderate area attainment date, rather than the Marginal area date. With respect to the 2015 ozone NAAQS, the Moderate area attainment date will be in the summer of 2024, and the last full year of monitored ozone-season data that will inform attainment demonstrations is, therefore, 2023.

The EPA's interpretation of the good neighbor requirements in relation to the Marginal area attainment date is consistent with the *Wisconsin* opinion. For the reasons explained below, the court's holding does not contradict the EPA's view that 2023 is an appropriate analytic year in evaluating good neighbor SIPs for the 2015 ozone NAAQS. The court in *Wisconsin* was concerned that allowing upwind emission reductions to be implemented after the applicable attainment date would require downwind states to obtain more emissions reductions than the Act requires of them, to make up for the absence of sufficient emissions reductions from upwind states. *See* 938 F.3d at 316. As discussed previously, however, this equitable concern only arises for nonattainment areas classified as Moderate or higher for which downwind states are required by the CAA to develop attainment plans securing reductions from existing sources and

demonstrating how such areas will attain by the attainment date. *See, e.g.*, CAA section 182(b)(1) & (2) (establishing “reasonable further progress” and “reasonably available control technology” requirements for Moderate nonattainment areas). Ozone nonattainment areas classified as Marginal are not required to meet these same planning requirements, and thus the equitable concerns raised by the *Wisconsin* court do not arise with respect to downwind areas subject to the Marginal area attainment date.

The distinction between planning obligations for Marginal nonattainment areas and higher classifications was not before the court in *Wisconsin*. Rather, the court was considering whether the EPA, in implementing its obligation to promulgate federal implementation plans under CAA section 110(c), was required to fully resolve good neighbor obligations by the 2018 *Moderate* area attainment date for the 2008 ozone NAAQS. *See* 938 F.3d at 312-13. Although the court noted that petitioners had not “forfeited” an argument with respect to the Marginal area attainment date, *see id.* at 314, the court did not address whether its holding with respect to the 2018 *Moderate* area date would have applied with equal force to the Marginal area attainment date because that date had already passed. Thus, the court did not have the opportunity to consider these differential planning obligations in reaching its decision regarding the EPA’s obligations relative to the then-applicable 2018 *Moderate* area attainment date because such considerations were not applicable to the case before the court.²⁴ For the reasons discussed here, the equitable concerns supporting the *Wisconsin* court’s holding as to upwind state obligations

²⁴ The D.C. Circuit, in a short judgment, subsequently vacated and remanded the EPA’s action purporting to fully resolve good neighbor obligations for certain states for the 2008 ozone NAAQS, referred to as the CSAPR Close-Out, 83 FR 65878 (Dec. 21, 2018). *New York v. EPA*, No. 19-1019 (Oct. 1, 2019). That result necessarily followed from the *Wisconsin* decision, because as the EPA conceded, the Close-Out “relied upon the same statutory interpretation of the Good Neighbor Provision” rejected in *Wisconsin*. *Id.* slip op. at 3. In the Close-Out, the EPA had analyzed the year 2023, which was two years after the Serious area attainment date for the 2008 ozone NAAQS and not aligned with any attainment date for that NAAQS. *Id.* at 2. In *New York*, as in *Wisconsin*, the court was not faced with addressing specific issues associated with the unique planning requirements associated with the Marginal area attainment date.

relative to the Moderate area attainment date also support the EPA's interpretation of the good neighbor provision relative to the Marginal area attainment date. Thus, the EPA proposes to conclude that its reliance on an evaluation of air quality in the 2023 analytical year for purposes of assessing good neighbor obligations with respect to the 2015 ozone NAAQS is based on a reasonable interpretation of the CAA and legal precedent.

As previously discussed, the March 2018 memorandum identifies potential downwind nonattainment and maintenance receptors, using the definitions applied in the CSAPR Update and using both the "3 x 3" and the "no water" approaches to calculating future year design values. The March 2018 memorandum identifies 57 potential nonattainment and maintenance receptors in the West in Arizona (2), California (49), and Colorado (6).²⁵ The March 2018 memorandum also provides contribution data regarding the impact of other states on the potential receptors. For purposes of evaluating South Dakota's 2015 ozone NAAQS interstate transport SIP submission, we propose that, at least where a state's impacts are less than one percent to downwind nonattainment and maintenance sites, it is reasonable to conclude that the State's impact will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. This is consistent with our prior action on South Dakota's SIP with respect to the 2008 ozone NAAQS²⁶ and with the EPA's approach to both the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update. The EPA notes, nonetheless, that consistent with the August 2018 memorandum, it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a one percent threshold, at step 2 of the

²⁵ The number of receptors in the identified western states is 57, irrespective of whether the "3 x 3" or "no water" approach is used. Further, although the EPA has indicated that states may have flexibilities to apply a different analytic approach to evaluating interstate transport, including identifying downwind air quality problems, because the EPA is also concluding in this proposed action that Oregon will have an insignificant impact on any potential receptors identified in its analysis, Oregon need not definitively determine whether the identified monitoring sites should be treated as receptors for the 2015 ozone standard.

²⁶ 81 FR 7706, February 16, 2016.

four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS. However, for the reasons discussed below, it is unnecessary for the EPA to determine whether it may be appropriate to apply a 1 ppb threshold for purposes of this action.

The EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that South Dakota's largest impact on any potential downwind nonattainment and maintenance receptor are 0.07 ppb and 0.05 ppb, respectively.²⁷ These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),²⁸ and as a result, demonstrate that emissions from South Dakota are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. Accordingly, we propose to conclude that emissions from South Dakota will not contribute to any potential receptors, and thus, the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

We also note that the EPA has assessed potential transport to the Shoshone-Bannock Tribes of the Fort Hall Reservation in southeast Idaho, which the EPA approved to be treated as an affected downwind state for CAA sections 110(a)(2)(D) and 126. While the Shoshone-Bannock Tribes do not operate an ozone monitor, the nearest ozone monitors to the Fort Hall Reservation are in Ada County, Idaho, in the Boise area and in Butte County, Idaho, in the Idaho Falls area. As discussed previously, the EPA's modeling did not identify receptors in Idaho and

²⁷ The EPA's analysis indicates that South Dakota will have a 0.07 ppb impact at the potential nonattainment receptor in Tarrant County, Texas (Site ID 484392003), which has a 2023 projected average design value of 72.5 ppb, and a 2023 projected maximum design value of 74.8 ppb. The EPA's analysis further indicates that South Dakota will have a 0.05 ppb impact at potential maintenance receptors in Allegan, Michigan (Site ID 260050003) and Queens, New York (Site ID 360810124), which both had projected 2023 average design values below the 2015 ozone NAAQS (69.0 and 70.2 ppb, respectively), and 2023 projected maximum design values above the NAAQS (71.7 and 72.0 ppb, respectively). *See* the March 2018 memorandum, attachment C.

²⁸ Because none of South Dakota's impacts equal or exceed 0.70 ppb, they necessarily also do not equal or exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

the ozone monitoring sites nearest to the Fort Hall Reservation were projected to remain below the current standard. For the Idaho Falls area monitoring site (Site ID 160230101), which had a 2014-2016 design value of 60 ppb, the EPA's modeling projects a 2023 maximum design value of 60.2 ppb and a 2023 average design value of 59.6 ppb, both below the 70 ppb standard. For the Boise area monitoring site with the highest projected ozone concentrations (Site ID 160010017), which had a 2014-2016 design value of 67 ppb, the EPA's modeling projects a 2023 maximum design value of 59.8 ppb and a 2023 average design value of 59.4 ppb.²⁹ We therefore, propose to find that emissions from South Dakota will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS at the Fort Hall Reservation.

On December 5, 2019, the EPA took final action finding that seven states, including South Dakota, had failed to submit a complete SIP to satisfy prongs 1 and 2 for the 2015 ozone NAAQS (84 FR 66612). This action established a 2-year deadline for EPA to promulgate Federal Implementation Plans (FIPs) for these states to address interstate transport of ozone, unless a state submits, and the EPA approves a SIP addressing these requirements before the EPA promulgates its FIP. South Dakota submitted the January 15, 2020 infrastructure SIP with the intention of correcting the issues giving rise to the EPA's December 5, 2019 incompleteness finding. Should the EPA finalize this action as proposed, the relevant obligations will be addressed, and we will no longer have a FIP deadline for prongs 1 and 2 of South Dakota's 2015 ozone infrastructure SIP.

Prong 3: Interference with PSD measures

²⁹ In attachment A of the October 2017 Memo, the EPA provided the projected ozone design values at individual monitoring sites nationwide. The data for the Idaho monitors is presented on page A-10.

As noted, the PSD portion of section 110(a)(2)(D)(i)(II) may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).³⁰ As noted in Section III.(c)(ii) of this proposed action, South Dakota has such a program, and the EPA is therefore proposing to approve South Dakota's SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

As stated in the 2013 Memo, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. South Dakota does not contain any nonattainment areas. The consideration of nonattainment NSR for element 3 is therefore not relevant as all major sources locating in the State are subject to PSD. As South Dakota's SIP meets PSD requirements for all regulated NSR pollutants, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i) for the 2015 ozone NAAQS.

Prong 4: Interference with measures to protect visibility

In our prong 4 review, the EPA primarily reviewed South Dakota's regional haze SIP. South Dakota submitted a regional haze SIP to the EPA on September 19, 2011. The EPA approved South Dakota's regional haze SIP on April 26, 2012 (77 FR 24845). The EPA is proposing to find that as a result of the prior approval of the South Dakota regional haze SIP, the

³⁰ See September 2013 Guidance at 31.

South Dakota SIP contains adequate provisions to address the 110(a)(2)(D)(i) visibility requirements for the 2015 ozone NAAQS. Therefore, we are proposing to approve the South Dakota SIP as meeting the requirements of prong 4 of CAA section 110(a)(2)(D)(i) for this NAAQS.

110(a)(2)(D)(ii): Interstate and international transport provisions

Regarding CAA section 110(a)(2)(D)(ii), South Dakota's SIP approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD, as required by 40 CFR 51.166(q)(2)(iv).³¹ This suffices to meet the notice requirement of section 126(a). South Dakota also has no pending obligations under sections 126(c) or 115(b). Therefore, the South Dakota SIP currently meets the requirements of those sections. In summary, the South Dakota SIP satisfies the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

E. CAA Section 110(a)(2)(E): Adequate Resources

Section 110(a)(2)(E)(i) requires states to provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof). Section 110(a)(2)(E)(ii) requires each state to comply with the requirements respecting state boards under CAA section 128. Section 110(a)(2)(E)(iii) requires states to "provide necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision."

(i) The State's submission:

³¹ See ARSD 74:36:09:03.

Sub-elements (i) and (iii): Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues

SDCL, specifically 34A-1-4, and 34A-1-7 through 34A-1-10, provide adequate authority for the State of South Dakota to carry out its SIP obligations with respect to the 2015 ozone NAQSS. Additionally, SDCL sections 34A-1-4, 34A-1-5, 34A-1-10(1), 34A-1-59 and 1-40-30, the State's agreements on EPA 103 and 105 grants and associated matching funds, also provide necessary funding to the State to carry out its SIP. Finally, SDCL 34A-1 provides South Dakota with the legal authority to carry out its SIP and related issues.

(ii) EPA's analysis:

The regulations cited by South Dakota in their certification and contained within this docket provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions by local governments. Therefore, we propose to approve South Dakota's SIP as meeting the requirements of section 110(a)(E)(i) and (E)(iii) for the 2015 ozone NAAQS.

Sub-element (ii): State boards

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. Section 128 requires SIPs to contain two explicit requirements: (i) that any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or

body or the head of an executive agency with similar powers be adequately disclosed.³²

(i) The State's submission:

In its January 15, 2020 submission, South Dakota references SDCL 1-40-25 and 1-40-25.1 in regard to section 110(a)(2)(E)(ii). SDCL 1-40-25 and 1-40-25.1 specify the board's composition and that it must comply with section 128 of the CAA.

(ii) EPA's analysis:

Details on how this portion of the SDCL meet the requirements of section 128 are provided in our December 1, 2014 proposal document (79 FR 71040). In our January 29, 2015 action (80 FR 4799), we correspondingly approved South Dakota's infrastructure SIP for the 2008 ozone NAAQS for element (E)(ii). South Dakota's SIP continues to meet the requirements of section 110(a)(2)(E)(ii), and we propose to approve South Dakota's infrastructure SIP for the 2015 ozone NAAQS for this element.

F. CAA Section 110(a)(2)(F): Stationary Source Monitoring System

Section 110(a)(2)(F) requires the SIP to require, as may be prescribed by the EPA: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources; (ii) Periodic reports on the nature and amounts of emissions and emissions-related data from such sources; and (iii) Correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

(i) The State's submission:

³² EPA's proposed rule document (79 FR 71040, Dec. 1, 2014) includes a discussion of the legislative history of CAA section 128.

The South Dakota statutory provisions listed in the State's certification (SDCL 34A-1-6 and SDCL 34A-1-12) and contained within this docket provide authority to establish a program for measurement and testing of sources, including requirements for sampling and testing. South Dakota's SIP approved continuous emissions monitoring system rules (ARSD 74:36:13 and contained within this docket) require facilities to monitor and report emission data. ARSD 74:36:04:15, contents of operating permit, requires operating permits for minor sources to include monitoring and related record keeping and reporting requirements. Reports contain the quantity of hazardous air pollutants, in tons, emitted for each 12-month period in the reporting period and supporting documentation. Operating permits for minor sources must comply with emission limits and other requirements of the Act (ARSD 74:36:04:04 and ARSD 74:36:04:15). Additionally, ARSD 74:36:05:16.01(9) is applicable regarding data from sources with title V permits. South Dakota has an approved title V program (61 FR 2720, Jan. 29, 1996) and the definition of applicable requirements for a Part 70 source has been approved into its SIP at ARSD 74:36:01:05. This re-enforces a facility's record keeping and reporting emissions data responsibilities under title V permitting, even though the title V program is not approved into the SIP.

(ii) The EPA's analysis:

South Dakota is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a

comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System (EIS). States report emissions data for six criteria pollutants and their associated precursors – nitrogen oxide (NO_x), sulfur dioxide (SO₂), ammonia, Pb, carbon monoxide (CO), PM, and volatile organic compounds (VOCs). South Dakota made its latest update to the NEI on October 22, 2018. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website <http://www.epa.gov/ttn/chief/eiinformation.html>.

Based on the analysis above, we propose to approve the South Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2015 ozone NAAQS.

G. CAA Section 110(a)(2)(G): Emergency Powers

Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to “provide for authority comparable to that in [CAA Section 303] and adequate contingency plans to implement such authority.”

Under CAA section 303, the Administrator has authority to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment. If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if the EPA subsequently files a civil suit.

(i) The State's submission:

South Dakota's SIP submittals with regard to the section 110(a)(2)(G) emergency order requirements explain that SDCL section 34A-1-45 (Emergency order for immediate reduction or discontinuance of emissions) is comparable to Section 303 of the Clean Air Act and provides

that “*if the Secretary of the Department of Environment and Natural Resources finds that any person is causing or contributing to air pollution and that such pollution creates an emergency by causing imminent danger to human health or safety and requires immediate action to protect human health or safety, the Secretary shall order such person or persons to reduce or discontinue immediately the emissions of air contaminants.*” Accordingly, we have reviewed South Dakota's statutory provisions for evidence that the State has authorities comparable to those in section 303. Our review included the provision discussed above, as well as provisions in the current SDCL.

South Dakota air pollution emergency episode rule ARSD 74:36:03:01 “Air pollution emergency episode” and ARSD 74:36:03:02 “Episode emergency contingency plan” were most recently approved on June 27, 2014 (79 FR 36425). We find that South Dakota's air pollution emergency rules establish stages of episode criteria; provide for public announcement whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR 51.151 and appendix L to part 51.

(ii) The EPA’s analysis:

While no single South Dakota statute mirrors the authorities of CAA section 303, we propose to find that the combination of SDCL and ARSD provisions discussed above provide for authority comparable to section 303 to immediately bring suit to restrain, issue emergency executive orders against, and use special rule adoption and suspension procedures for applicable emergencies to take prompt administrative action against, any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment. Consistent with EPA's 2013 Infrastructure SIP Guidance, the narratives

provided in South Dakota's SIP submittals about the State's authorities applying to emergency episodes (as discussed above), plus additional South Dakota statutes that we have considered, we propose that they are sufficient to meet the authority requirement of CAA section 110(a)(2)(G). The SIP therefore meets the requirements of 110(a)(2)(G). Based on the above analysis, we propose approval of South Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

H. CAA Section 110(a)(2)(H): Future SIP Revisions

Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard; and (ii), except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this [Act].

(i) The State's submission:

The South Dakota submission refers to SDCL Section 34A-1-6 provides DENR with the authority to revise the State's SIP to meet all federal requirements and to revise the SIP whenever necessary or appropriate, such as changes to the NAAQS or in response to the EPA finding the State's SIP to be inadequate.

(ii) The EPA's analysis:

SDCL Section 34A-1-6 directs DENR to promulgate a comprehensive SIP that meets all federal requirements and to revise the SIP whenever necessary or appropriate. Therefore, we propose to approve South Dakota's SIP as meeting the requirements of CAA section

110(a)(2)(H).

I. CAA Section 110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are due on nonattainment area plan schedules pursuant to section 172 and the various pollutant-specific subparts 2 through 5 of part D. These are submissions required by: (i) CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, Title I of the CAA; and (ii) section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address CAA section 110(a)(2)(C) with respect to NNSR or CAA section 110(a)(2)(I).

J. CAA Section 110(a)(2)(J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection

CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and FLMs pursuant to CAA section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances pursuant to CAA section 127. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, Title I of the CAA related to prevention of significant deterioration and visibility protection.

(i) The State's submission:

The South Dakota submission references the following laws and regulations relating to consultation with identified officials on certain air agency actions; public notification; PSD; and visibility protection:

- SDCL section 34A-1-1;

- SDCL section 34A-1-9;
- SDCL section 34A-1-10; and
- SDCL section 1-40-31.

(ii) The EPA's analysis:

The State has demonstrated it has the authority and rules in place through its certifications (contained within this docket) to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121.

Furthermore, EPA previously addressed the requirements of CAA section 127 for the South Dakota SIP and determined public notification requirements are appropriate (45 FR 58528, Sept. 4, 1980). As discussed above, the State has a SIP-approved PSD program that incorporates by reference the federal program at 40 CFR 52.21. EPA has further evaluated South Dakota's SIP approved PSD program in this proposed action under element (C) and determined the State has satisfied the requirements of element 110(a)(2)(C), as noted above. Therefore, the State has also satisfied the requirements of element 110(a)(2)(J).

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective.

Addressing the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C, Title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C). The EPA most recently approved revisions to South Dakota's PSD program on May 3, 2019 (84 FR 18991), updating the program for current Federal requirements. Therefore, we are proposing to approve the South Dakota SIP as meeting the requirements of CAA 110(a)(2)(J) with respect to PSD for the 2015 ozone NAAQS.

The State has demonstrated it has the authority and rules in place through its certification (contained within this docket) to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121. Furthermore, EPA previously addressed the requirements of CAA section 127 for the South Dakota SIP and determined public notification requirements are appropriate (45 FR 58528, Sept. 4, 1980).

Based on the above analysis, we are proposing to approve the South Dakota SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2015 ozone NAAQS.

K. CAA Section 110(a)(2)(K): Air Quality and Modeling/Data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

The EPA's requirements for air quality modeling for criteria pollutants are found in 40 CFR part 51, appendix W, Guideline on Air Quality Models. On January 17, 2017 (82 FR 5182),

the EPA revised appendix W, effective February 16, 2017. The *Federal Register* document stated: “For all regulatory applications covered under the Guideline, except for transportation conformity, the changes to the appendix A preferred models and revisions to the requirements and recommendations of the Guideline must be integrated into the regulatory processes of respective reviewing authorities and followed by applicants by no later than January 17, 2018.”

(i) The State’s submission:

South Dakota's PSD program incorporates by reference the federal program at 40 CFR 52.21, including the provision at 40 CFR 52.21(l)(1) requiring that estimates of ambient air concentrations be based on applicable air quality models specified in appendix W of 40 CFR part 51, and the provision at 40 CFR 52.21(l)(2) requiring that modification or substitution of a model specified in appendix W must be approved by the Administrator.

In its submission, the State references SDLC section 34A-1-1, 34A-1-10, and 1-40-31 and that they provide the DENR with the authority to advise, consult, and cooperate with EPA and provide EPA with public records, such as air quality modeling. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

(ii) The EPA’s analysis:

Based on the above information, we are proposing to approve the South Dakota SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2015 ozone NAAQS.

L. CAA Section 110(a)(2)(L): Permitting Fees

CAA section 110(a)(2)(L) directs SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

(i) State’s submission:

The South Dakota submission refers to ARSD 74:37:01 – Air Emission Fees; which requires owners or operators of major stationary sources to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing Title V air quality operating permits.

(ii) The EPA’s analysis:

The EPA-approved ARSD 74:37:01 adequately addresses requirements in CAA section 110(a)(2)(L) regarding construction (i.e. NSR) permits. With respect to title V permits, on February 28, 1996 the EPA fully approved South Dakota’s part 70 title V operating permit program (61 FR 2720). The fully approved South Dakota title V program and South Dakota’s ARSD 74:37:01 demonstrate that fees will be adequate to fund the title V and NSR programs, and that the State will collect fees in accordance with 40 CFR 70.9(b)(2)(i). Therefore, we are proposing that South Dakota has satisfied the requirements of CAA section 110(a)(2)(L) for the 2015 ozone NAAQS.

M. CAA Section 110(a)(2)(M): Consultation/Participation by Affected Local Entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

(i) State’s submission:

South Dakota refers to the following rules and regulations, which require and provide authority for public hearings, notice of hearings, public comment periods, and the consultation and coordination between state and local governments:

- SDCL section 34A-1-1; and
- SDCL section 34A-1-10.

(ii) The EPA’s analysis:

The rules and regulations cited by South Dakota provide for the consultation and participation by local political subdivisions affected by the SIP; therefore, we are proposing to approve the South Dakota SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2015 ozone NAAQS.

N. Revisions to South Dakota Air Pollution Control Rules

On January 3, 2020 the EPA received revisions for the ARSD for the State of South Dakota. In this document, the EPA is proposing to approve the ARSD rule revisions that update the date of incorporation by reference of federal rules to July 1, 2018. The submittal was signed by the Governor and received a 30-day public comment period starting on November 26, 2019 (no requests were made for a public hearing). The EPA is proposing to approve all of the revisions to the ARSD for the State of South Dakota submitted by the State on January 3, 2020 in this action.

IV. Proposed Action

In this action, the EPA is proposing to approve South Dakota’s January 15, 2020 submission for all CAA section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS. Additionally, the EPA is proposing to approve the incorporation by reference revisions to the ARSD submitted by the State of South Dakota on January 3, 2020.

TABLE 1: INFRASTRUCTURE ELEMENTS THAT THE EPA IS PROPOSING TO ACT ON

In the table below, the key is as follows:

A - Approve.

D - Disapprove.

2015 Ozone NAAQS Infrastructure SIP Elements and Revisions to the Administrative Rules of South Dakota (ARSD)	
(A): Emission Limits and Other Control Measures	A

(B): Ambient Air Quality Monitoring/Data System	A
(C): Program for Enforcement of Control Measures	A
(D)(i)(I): Prong 1 Interstate Transport - significant contribution	A
(D)(i)(I): Prong 2 Interstate Transport - interference with maintenance	A
(D)(i)(II): Prong 3 Interstate Transport - prevention of significant deterioration	A
(D)(i)(II): Prong 4 Interstate Transport - visibility	A
(D)(ii): Interstate and International Pollution Abatement	A
(E): Adequate Resources	A
(F): Stationary Source Monitoring System	A
(G): Emergency Episodes	A
(H): Future SIP revisions	A
(J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection	A
(K): Air Quality and Modeling/Data	A
(L): Permitting Fees	A
(M): Consultation/Participation by Affected Local Entities	A
South Dakota ARSD; revisions to South Dakota's Air Quality Program; chapters pertaining to definitions, ambient air quality, air quality episodes, prevention of significant deterioration, new source review, performance testing, control of visible emissions, continuous emission monitoring systems, state facilities in Rapid City area, construction permits and regional haze program administrative rules	A

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference South Dakota's January 3, 2020 submission of the

ARSD of the State of South Dakota. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the persons identified in the “For Further Information Contact” section of this preamble for more information).

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. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the 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 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 the 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 the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 12, 2020.

Gregory Sopkin,
Regional Administrator,
EPA Region 8.

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