ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2013–0130, FRL–9800–4]

Approval and Promulgation of Implementation Plans; New Jersey; Infrastructure SIP for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve most elements of New Jersey's State Implementation Plan (SIP) revisions submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 8-hour ozone and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). EPA is proposing to conditionally approve certain elements of the submittals, as well as to find that certain elements of New Jersey's submittals do not meet section 110(a)(2) requirements with existing State rules. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an infrastructure SIP.

DATES: Comments must be received on or before May 10, 2013.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2013–0130, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Email: *Ruvo.Richard@EPA.GOV.*
- Fax: 212–637–3901.
- Mail: Richard Ruvo, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Richard Ruvo, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2013–0130. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that 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 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249, or by email at *truchan.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing?
II. What is the background information?
III. What is a section 110(a)(1) and (2) SIP?
IV. What elements are required under section 110(a)(1) and (2)?
V. What did New Jersey submit?
VI. How has the State addressed the elements of the section 110(a)(1) and (2) ''infrastructure'' provisions?
VII. What action is EPA taking?
VIII. Statutory and Executive Order Reviews

I. What Action is EPA Proposing?

EPA is proposing to approve, conditionally approve, and disapprove elements of the State of New Jersey Infrastructure SIP as meeting the section 110(a) infrastructure requirements of the Clean Air Act (CAA) for the 1997 ozone, 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). As explained below, the State has the necessary infrastructure, resources, and general authority to implement the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ standards, except where specifically noted.

II. What is the Background Information?

On July 18, 1997, EPA promulgated new and revised NAAQS for 8-hour ozone (62 FR 38856) and $PM_{2.5}$ (62 FR 38652). The ozone NAAQS are based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm.[1] The new $PM_{2.5}$ NAAQS established a health-based standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA strengthened the 24-hour $PM_{2.5}$ NAAQS from 65 $\mu g/m^3$ to 35 $\mu g/m^3$ on October 17, 2006 (71 FR 61144).[2]

Section 110(a) of the CAA requires states to submit State Implementation Plans (SIPs) that provide for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS.

[1] EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). On September 22, 2011, EPA clarified that the current ozone standard is set at 75 ppb. EPA is not addressing the 2008 ozone NAAQS in this rulemaking.

[2] EPA issued a revised $PM_{2.5}$ standard on January 15, 2013 (78 FR 3086). EPA is not addressing the 2012 $PM_{2.5}$ NAAQS in this rulemaking.

III. What is a section 110(a)(1) and (2) SIP?

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. Sections 110(a)(1) and (2) of the CAA requires, in part, that states submit to EPA plans to implement, maintain and enforce each of the NAAQS promulgated by EPA. EPA interprets this provision to require states to address basic SIP requirements including emission inventories, monitoring, and modeling to assure attainment and maintenance of the standards. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. These SIPs are commonly called infrastructure SIPs. In 1997, EPA promulgated the 8-hour ozone primary and secondary NAAQS and a new annual and 24-hour $PM_{2.5}$ NAAQS. Intervening litigation over the 1997 standards caused a delay in SIP submittals. In 2006, EPA promulgated a new 24-hour $PM_{2.5}$ NAAQS.

IV. What elements are required under section 110(a)(1) and (2)?

The infrastructure requirements are listed in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' and September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards.'' [3] The 14 elements required to be addressed are as follows: (1) Emission limits and other control measures; (2) ambient air quality monitoring/data system; (3) program for enforcement of control measures; (4) interstate transport; (5) adequate resources; (6) stationary source monitoring system; (7) emergency power; (8) future SIP revisions; (9) consultation with government officials; (10) public notification; (11) prevention of significant deterioration (PSD) and visibility protection; (12) air quality modeling/data; (13) permitting fees, and (14) consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to section 172. See 77 FR 46354 (August 3, 2012); 77 FR 60308 (October 3, 2012) (footnote 1). These requirements are: (1) Submissions required by 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 (2) submissions required by 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 the above infrastructure elements related to section 110(a)(2)(C) or 110(a)(2)(I).

This action also does not address the requirements of section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS, since they had been addressed in previous rulemakings. See October 1, 2007 (72 FR 55666). Additionally, this action does not address the requirements of section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS, which was addressed in a previous EPA rulemaking. See July 20, 2011 (76 FR 43153).

Scope of Infrastructure SIPs

This rulemaking will not cover four substantive issues that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (''SSM'') at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''); (iii) existing provisions for minor source NSR programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's July 13, 2011, final rule entitled, ''Approval and Promulgation of Air Quality Implementation Plans; Illinois; Indiana; Michigan; Minnesota; Ohio; Wisconsin; Infrastructure SIP Requirements for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' in the section entitled, ''What is the scope of this final rulemaking?'' (76 FR 41075 at 41076–41079).

V. What did New Jersey Submit?

EPA is acting on two New Jersey SIP submittals, dated February 25, 2008 and January 15, 2010, which address the section 110 infrastructure requirements for the three NAAQS: The 1997 8-hour ozone NAAQS, the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, and the 2006 24-hour $PM_{2.5}$ NAAQS.

February 25, 2008 SIP submission

New Jersey's section 110 infrastructure submittal was submitted by the New Jersey Department of Environmental Protection (NJDEP) on February 25, 2008 and addressed the 1997 8-hour ozone and fine particulate matter ($PM_{2.5}$) NAAQS. Effective April 28, 2008, the submittal was determined to be complete for all elements except 110(a)(2)(C). 73 FR 16205 (March 27, 2008). New Jersey's February 2008 section 110 submittal demonstrates how the State, where applicable, has a plan in place that meets the requirements of section 110 for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. This plan references the current New Jersey Air Quality SIP, the New Jersey Statutes Annotated (NJSA) and/or the New Jersey Administrative Code (NJAC). The NJSA, and NJAC (air pollution control regulations) referenced in the submittal are publicly available. Prior to submitting to EPA, NJDEP held a public hearing, on January 28, 2008, on New Jersey's 110 infrastructure submittal and accepted written comments until January 31, 2008. The New Jersey SIP was subject to public notice and comment and a public hearing when adopted. New Jersey air pollution control regulations that have been previously approved by EPA and incorporated into the New Jersey SIP can be found at 40 CFR 52.1605 and are posted on the Internet at: *http://www.epa.gov/region02/air/sip/nj_reg.htm.*

January 15, 2010 SIP submission

New Jersey's section 110 infrastructure submittal for the 2006

[3] ''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'' at *http://www.epa.gov/ttn/oarpg/t1/memoranda/110a_sip_guid_fin100207.pdf* ''Guidance on SIP Elements Required Under Sections 110(a)(l) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' *http://www.epa.gov/ttn/oarpg/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf.*

$PM_{2.5}$ 24-hour NAAQS was submitted by the New Jersey Department of Environmental Protection (NJDEP) on January 15, 2010, and the submittal was deemed complete July 15, 2010.

EPA's evaluation of both submittals is detailed in the ''Technical Support Document for EPA's Proposed Rulemaking for the New Jersey State Implementation Plan Revision: State Implementation Plan Revision For Meeting the Infrastructure Requirements In the Clean Air Act Dated February 2008 and January 2010'' (TSD). As explained in the **ADDRESSES** section of this action, the TSD is available in the docket (EPA–R02–OAR–2013–0130) for this action and at the EPA Region 2 Office.

VI. How has the State addressed the elements of the section 110(a)(1) and (2) ''infrastructure'' provisions?

A. Emission limits and other control measures: Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means, or techniques, and schedules for compliance. EPA notes that the specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirement of section 172, not the timing requirement of section 110(a)(1). New Jersey's Air Pollution Control Act (Pub. L.1954), codified at NJSA 26:2C, provides the NJDEP with power to formulate and promulgate, amend and repeal codes and rules and regulations, preventing, controlling and prohibiting air pollution throughout the State at NJSA 26:2C–8. The federally enforceable New Jersey SIP contains enforceable emission limits and other control measures. EPA is proposing to determine that New Jersey has met the requirements of section 110(a)(2)(A) of the Act with respect to the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

B. Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, to monitor, compile and analyze ambient air quality data, and to make these data available to EPA upon request. New Jersey, under its authority provided in NJSA 26:2C–9.a, operates and maintains a network of ambient air quality monitors and submits the data collected to EPA. New Jersey has submitted annual air monitoring network plans which have been approved by EPA. The most recent was approved by EPA on March 29, 2013. EPA is proposing to determine that the New Jersey SIP meets the requirements of section 110(a)(2)(B) of the Act with respect to the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.

C. Program for enforcement of control measures: Section 110(a)(2)(C) requires states to have a plan that includes a program providing for enforcement of all SIP measures and the regulation of the modification and construction of any stationary source, including a program to meet Prevention of Significant Deterioration (PSD) and minor source new source review.

The NJDEP is authorized by NJSA 26:2C–19 to enforce its control measures and the air permitting program for stationary sources. The minor source permitting and enforcement programs operate under NJAC 7:27 and 7:27A, respectively. EPA proposes to find that the State has adequate authority and regulations to insure that SIP approved control measures are enforced for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

New Jersey's is currently subject to 40 CFR 52.1603 with respect to the PSD permit program required by Part C of the Act. As a result, a Federal Implementation Plan (FIP) includes 40 CFR 52.21 as part of the New Jersey applicable State plan. New Jersey has been delegated authority to implement 40 CFR 52.21 and has been successfully implementing the program. Because New Jersey does not have its own State adopted rule, its infrastructure submissions are not approvable with respect to this element. However, the State is not subject to mandatory sanctions solely as a result of this type of infrastructure SIP deficiency, since the SIP deficiency is neither with respect to a submittal that is required under part D nor in response to a SIP call under section 110(k)(5) of the CAA. Moreover, the requirements for which the State is subject to the FIP are already satisfied by the incorporation by reference of the provisions of 40 CFR 52.21 into a FIP for New Jersey, and so EPA has no additional FIP obligations under section 110(c).

EPA proposes to find that the State has adequate authority and regulations to ensure that SIP-approved control measures are enforced. EPA also finds that, based on the delegation of 40 CFR 52.21, New Jersey has the delegated authority to regulate the construction of new or modified stationary sources to meet the PSD program requirements. Though New Jersey satisfies the requirement to regulate the construction of new or modified sources through PSD delegation, since New Jersey's PSD program is a federally delegated program, New Jersey has not satisfied the requirements of sections 110(a)(2)(C) and (J) for all three NAAQS to have a state adopted program and the currently existing FIP remains in place.

D. Interstate transport: Section 110(a)(2)(D) is divided into two subsections, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) consists of two subsections (I) and (II), each of which has two ''prongs.'' The two prongs under 110(a)(2)(D)(i)(I) prohibit any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will (prong 1) contribute significantly to nonattainment in any other state with respect to any primary or secondary NAAQS, and (prong 2) interfere with maintenance by any other state with respect to any primary or secondary NAAQS. The two prongs under 110(a)(2)(D)(i)(II) prohibit any source or other type of emissions activity within the state from emitting any air pollutants in amounts which will interfere with measures required to be included in the applicable implementation plan for any other state under part C (prong 3) to prevent significant deterioration of air quality or (prong 4) to protect visibility.

Section 110(a)(2)(D)(ii) addresses interstate and international pollution abatement, and requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

In this action for New Jersey, with respect to section 110(a)(2)(D)(i), we are only addressing prong 3 (i.e., interference with PSD) and prong 4 (i.e., to protect visibility) of 110(a)(2)(D)(i)(II). EPA previously took rulemaking action on prong 1 and prong 2 on October 1, 2007 (72 FR 55666) and July 20, 2011 (76 FR 43153), respectively. For prong 3, as discussed previously under (C) (Program for enforcement of control measures), New Jersey is currently subject to a PSD FIP. A state's infrastructure SIP submittal cannot be considered for approvability with respect to prong 3 until EPA has issued final approval of that state's PSD SIP or, alternatively, has issued final approval of a SIP that EPA has otherwise found adequate to prohibit interference with other state's measures to prevent significant deterioration of air quality. Therefore, we are proposing to disapprove New Jersey's 110(a) submissions for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$NAAQS for prong 3 of 110(a)(2)(D)(i)(II) because New Jersey is currently subject to a PSD FIP and does not have a PSD SIP. This disapproval will not trigger any sanctions or additional FIP obligation, since a FIP is already in place. This action will have no discernible effect on

the implementation of the PSD program in New Jersey, as the State is implementing a well-established PSD program through EPA delegation.

For prong 4, New Jersey has met its obligations pursuant to section 110(a)(2)(D)(i)(II) for visibility protection for all three NAAQS through its Regional Haze SIP submittals, which were approved by EPA on January 3, 2012, **Federal Register** (77 FR 19). The regional haze rule specifically requires that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. Thus, New Jersey's approved regional haze SIP will ensure that emissions from sources within the State are not interfering with measures to protect visibility in other states. Therefore, EPA proposes to find for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS that NJDEP satisfies the section 110(a)(2)(D)(i)(II) requirement for visibility.

Regarding section 110(a)(2)(D)(ii), which relates to interstate and international pollution abatement, as noted above, New Jersey is subject to a PSD FIP. States relying on the Federal PSD program requirements of 40 CFR 52.21(q), (which provide for notification of affected state and local air agencies) to satisfy this requirement have programs that are considered technically deficient and not approvable. Therefore, we are proposing to disapprove New Jersey's submissions for infrastructure element 110(a)(2)(D)(ii) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. This disapproval will not trigger any sanctions or additional FIP obligation. It should be noted, that New Jersey has no pending obligations under section 115 or 126(b) of the Act and satisfies these requirements of section 110(a)(2)(D)(ii) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

E. Adequate resources: Section 110(a)(2)(E) requires each state to provide (i) 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), (ii) requires that the state comply with the requirements respecting state boards under section 128, and (iii) 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.

New Jersey has adequate authority, under NJSA 13:1D–9, to carry out its SIP obligations with respect to the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. New Jersey receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required State-matching funds to provide funding necessary to carry out its SIP requirements. Therefore, EPA proposes to find New Jersey has sufficient resources to meet the requirements of section 110(a)(2)(E)(i) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

Congress added section 128 in the 1977 amendments. Titled ''State boards,'' section 128 provides in relevant part: ''(a) Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that: (1) Any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter, and (2) 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.'' New Jersey does not have a state board that approves permits or enforcement orders under the CAA. Instead, permits and enforcement orders are approved by the State's Commissioner of Environmental Protection. Thus, the requirements of subsection 128(a)(1) are not applicable to New Jersey. New Jersey is subject to the requirements of section 128(a)(2). In its SIP submission New Jersey cited NJSA 52:13D–12 et seq. which addresses the conflict of interest requirement. EPA proposes to conditionally approve the infrastructure SIP in fulfilling the requirements of section 110(a)(2)(E)(ii) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS provided the State submits, for approval into the SIP, those statutes or regulations necessary to substantively meet the requirements of CAA section 128(a)(2).

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 provision of the SIP, the state has responsibility for ensuring adequate implementation of the SIP provision. The NJDEP has the authority to delegate inspection and enforcement efforts for various regulations under the County Environmental Health Act (NJSA 26:3A2–21 et seq.). EPA in the past identified a deficiency in meeting this requirement. See 40 CFR 52.1579 Intergovernmental cooperation.

While New Jersey has the authority to delegate responsibilities to county or local governments to implement certain SIP responsibilities, the information provided in both infrastructure SIP submittals does not identify the specific organizations that will participate in developing, implementing, and enforcing the plan and the responsibilities of such organizations. EPA proposes to conditionally approve the infrastructure SIP with regard to the requirements of section 110(a)(2)(E)(iii). The State must identify the county or local governments or entities such as metropolitan planning organizations (MPOs) that participate in the SIP planning efforts, identify the county or local governments or entities that have been delegated responsibilities to implement or enforce portions of the SIP, and provide copies of the agreements or memoranda of understanding (MOUs) between the State and the county or local governments or entities. Since it is EPA's understanding that this deficiency involves information that exists but was not provided in the SIP submittal, EPA proposes to conditionally approve section 110(a)(2)(E)(iii) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. In the alternative, should New Jersey provide this information before we take final rulemaking, EPA will fully approve section 110(a)(2)(E)(iii) and remove 40 CFR 52.1579.

F. Stationary source monitoring system: Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. The NJDEP has the authority pursuant to NJSA 26:2C–9.2 to require emissions monitoring of stationary sources before an operating permit is issued or renewed. NJDEP has adopted regulations to implement the federal requirements for stationary source emissions monitoring and reporting in NJAC 7:27–8 and 7:27–22.

The NJDEP has the authority pursuant to NJSA 26:2C–9 to require emissions reports from stationary sources and to allow emission information to be made available to the public.

EPA previously disapproved inclusion of NJSA 26:2C–9 into the SIP finding that, in some circumstances, it could prohibit the disclosure of emission data to the public. See 40 CFR 52.1575. In 1995 New Jersey revised NJSA 26:2C–9, specifically NJSA 26:2C–9b.(4) to limit what information could

be considered confidential and specifically added the phrase ''other than actual or allowable air contaminant emissions'' to clarify what cannot be considered confidential. N.J. ALS 188. The same legislation, established authority for New Jersey to require individuals responsible for operations that emit air pollution, to file emission statements. The NJDEP has adopted and EPA has approved NJAC 7:27, Subchapter 21—''Emission Statements'' as part of the applicable SIP. See 69 FR 46104 (August 2, 2004).

Based on the revisions to the New Jersey Air Pollution Control Act and the adoption of the Subchapter 21—''Emission Statements,'' EPA is proposing to find that New Jersey has met the requirements of section 110(a)(2)(F) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS and is proposing to revoke 40 CFR 52.1575.

G. Emergency power: Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

For $PM_{2.5}$, EPA's guidance dated September 25, 2009[4] provides clarification that states that have air quality control regions identified as either Priority I, Priority IA or Priority II by the ''Prevention of Air Pollution Emergency Episodes'' rules at 40 CFR 51.150 must develop emergency episode contingency plans. States are required to develop emergency episode plans for any area that has monitored and recorded 24-hour $PM_{2.5}$ levels greater than 140.4 $\mu g/m^3$ since 2006. A state that has never exceeded this level since 2006 is considered to be Priority III. See 40 CFR 51.150(f). In accordance with the guidance, for a Priority III area a state may certify that it has appropriate general emergency powers to address $PM_{2.5}$-related episodes, and is not required to adopt specific emergency episode plans at this time, given the existing monitored levels.

Since 2006 air-quality monitors in New Jersey show that $PM_{2.5}$ levels have been below the 140.5 $\mu g/m^3$ threshold. New Jersey certified in its infrastructure submittals that it should be classified as a Priority III region and, therefore, emergency episode plans for $PM_{2.5}$ are not required. Therefore, New Jersey has met the requirements of section 110(a)(2)(G) for both the 1997 and 2006 $PM_{2.5}$ NAAQS.

In general and for the 1997 ozone standard, the section 110(a)(2)(G) requirements are addressed by New Jersey's Air Pollution Emergency Control Act (NJSA 26:2C–26 et seq.), which is implemented through NJAC 7:27–12 ''Prevention and Control of Air Pollution Emergencies.'' While the New Jersey SIP contains Subchapter 12, it is not the current version of the State rule. In addition, Subchapter 12 requires that the NJDEP publish in the New Jersey Register the emergency criteria that will be used in making alerts, warnings or emergencies. NJDEP has not provided the criteria. Therefore, EPA is proposing to condition its approval based on NJDEP submitting, for approval into the SIP, the current version of Subchapter 12 and the emergency criteria levels that will be used.

H. Future SIP revisions: Section 110(a)(2)(H) requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining NAAQS, and in response to an EPA finding that the SIP is substantially inadequate.

The NJDEP is given the authority by NJSA 13:1D–9 to formulate comprehensive policies ''for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State.'' EPA proposes to find that the State has adequate authority to develop and implement plans and programs that fulfills the requirements of section 110(a)(2)(H) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

I. Nonattainment Area Plans Under Part D: Section 110(a)(2)(I) of the CAA requires that each such plan shall ''in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).'' EPA is not evaluating nonattainment-related provisions, the NSR program required by part D in section 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs because, as discussed elsewhere in this proposal, these submittals have been addressed by other SIP revisions which EPA has or will be acting on in other rulemakings.

J. Consultation With Government Official, Public Notification, PSD, and Visibility Protection: Section 110(a)(2)(J) requires states to meet the applicable requirements of CAA section 121, relating to consultation, CAA section 127, relating to public notification, and CAA title I, part C, relating to the prevention of significant deterioration of air quality and visibility protection.

Consultation With Government Officials

Section 121 requires a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements. EPA finds that the 110(a) submittals from New Jersey, and the cited authority of NJSA 26:2C–8 and 9, meet the requirements of section 110(a)(2)(J) for consultation with government officials.

Public Notification

Section 127 requires that the state plan include measures to effectively notify the public of any NAAQS exceedances, advise the public of health hazards associated with such pollution, and include measures to enhance public awareness of measures that can be taken to prevent exceedances.

New Jersey is a partner participating in EPA's AIRNOW and EnviroFlash Air Quality Alert programs. (See *www.airnow.gov.*) EPA is proposing to find that New Jersey's SIP submittal has met the public notification requirements of section 110(a)(2)(J) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. See NJSA 26:2C–9.

PSD

Section 110(a)(2)(J) also requires states to meet applicable requirements of Part C related to prevention of significant deterioration and visibility protection. EPA evaluated this requirement in the context of section 110(a)(2)(C) with respect to permitting (see discussion under (C) (program for enforcement of control measures)). EPA interprets this section 110 provision relating to visibility as not being ''triggered'' by a new NAAQS because the visibility requirements in part C are not changed by a new NAAQS.

New Jersey is currently subject to a PSD FIP, as discussed under (C) (Program for enforcement of control measures). The approvability of a state's PSD program in its entirety is essential to the approvability of the infrastructure SIP with respect to section 110(a)(2)(J). Until the State provides such a program, the New Jersey infrastructure SIP is not approvable with respect to section 110(a)(2)(J). Therefore, EPA proposes to disapprove New Jerseys' infrastructure SIP with respect to the PSD sub-element of 110(a)(2)(J) for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. However, as noted in sections C and D, above, this disapproval does not impose any sanctions or new FIP obligations.

[4] See Guidance on SIP Elements Required Under Sections 110(a)(l) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, dated September 25, 2009.

K. Air quality and modeling/data: Section 110(a)(2)(K) requires that SIPs provide for air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

The infrastructure submittals from New Jersey reference regulations that have provisions for performing air-quality modeling, including modeling for attainment plans, permits, and redesignation requests. NJAC 7:27–8.5 and 22.8. EPA proposes to find that the State has adequate authority to perform air quality modeling that fulfills the requirements of section 110(a)(2)(K).

L. Permitting fees: Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit, until such time as the SIP fee requirement is superseded by EPA's approval of the State's Title V operating permit program. EPA's full approval of the title V program for New Jersey became effective on November 30, 2001. 66 FR 63168 (December 5, 2001). Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. New Jersey's title V program included a demonstration that the State will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). The State collects sufficient fees to administer its title V permit program. EPA proposes to find that the State has meet the requirements for section 110(a)(2)(L).

M. Consultation/participation by affected local entities: Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. EPA proposes to find that the State has adequate authority and procedures that fulfills the requirements of section 110(a)(2)(M). See NJSA 26:2C–8 and 52:14B.

VII. What action is EPA taking?

EPA is proposing to approve New Jersey's submittals as fully meeting the infrastructure requirements for the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS for the following section 110(a)(2) elements and sub-elements: (A), (B), (C) (as it relates to the enforcement of SIPs), (D)(i)(II) prong 4 (visibility), (E)(i), (F), (H), (J) (consultation), (J) (public notification), (K), (L), and (M). EPA is also proposing to find that New Jersey has met the confidentiality requirements of section 110(a)(2)(F) and is proposing to remove 40 CFR 52.1574 and 40 CFR 52.1575.

EPA is proposing to disapprove New Jersey's submittals for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS section 110(a)(2) sub-elements: (C), prong 3 of (D)(i)(II), and (J) as they relate to the State's lack of a state adopted PSD program, as well as (D)(ii), which relates to interstate and international pollution abatement and PSD. However, these disapprovals will not trigger any sanctions or additional FIP obligation since a PSD FIP is already in place.

EPA is proposing to conditionally approve New Jersey's submittals for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS for the following 110(a)(2) elements and sub-elements: E(ii) (conflict of interest provisions), E(iii) (delegations), and for the 1997 8-hour ozone element (G) (emergency powers). New Jersey must commit in writing on or before May 10, 2013 to correct the deficiencies discussed above. New Jersey must then correct the deficiencies and submit them to EPA within one year of EPA's final action on this SIP action. Some of the deficiencies involve providing information that EPA is familiar with and believes currently exists, but was not included in the State's submittal. Should New Jersey provide this information before we take final rulemaking, EPA is also proposing in the alternative to fully approve: Section 110(a)(2)(E)(ii), section 110(a)(2)(E)(iii) and remove 40 CFR 52.1579, and section 110(a)(2)(G).

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from a State to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to complete requirements of each section 110(a)(2) element listed above. If New Jersey fails to do so for any section 110(a)(2) element, our conditional approval of that element will, by operation of law, become a disapproval for New Jersey one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved SIP for New Jersey. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If New Jersey meets its commitments within the applicable time frame, the conditionally approved submission will remain a part of the SIP or SIPs until EPA takes final action approving or disapproving the element in question.

If EPA disapproves a State's new submittal, the conditionally approved section 110(a)(2) element will also be disapproved at that time. If EPA approves the submittal, the section 110(a)(2) element will be fully approved in its entirety and replace the conditionally approved 110(a)(2) element in the SIP. Finally, if, based on information received before EPA takes final action on this proposal, EPA determines that it cannot issue a final conditional approval for one or more elements for which EPA has proposed a conditional approval, then EPA will instead issue a disapproval for such elements.

As discussed in section I, above, EPA is not acting on New Jersey's submittal as it relates to nonattainment provisions, the NSR program required by part D in section 110(a)(2)(C) and the measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs because these submittals have been addressed by other SIP revisions which EPA has or will be acting on in other rulemakings.

EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery or courier following the directions in the **ADDRESSES** section of this **Federal Register**.

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: April 1, 2013.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2013–08238 Filed 4–9–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2013–0180, FRL–9800–3]

Approval and Promulgation of Implementation Plans; New York State Ozone Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of oxides of nitrogen. The proposed SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations Part 200, ''General Provisions,'' Part 212, ''General Process Emission Sources,'' Part 220, ''Portland Cement Plants and Glass Plants,'' and Subpart 227–2, ''Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NOx).'' The intended effect of this action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain the national ambient air quality standards for ozone.

DATES: Comments must be received on or before May 10, 2013.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R02–OAR–2013–0180, by one of the following methods:

• *www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *Email: Ruvo.Richard@epa.gov.*

• *Fax:* 212–637–3901.

• *Mail:* Richard Ruvo, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

• *Hand Delivery:* Richard Ruvo, acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

Instructions: Direct your comments to Docket No. EPA–R02–OAR–2013–0180. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that 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, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber (*wieber.kirk@epa.gov*), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

SUPPLEMENTARY INFORMATION: