- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS for the State of West Virginia, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 30, 2014.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding the entry for Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide NAAQS at the end of the table to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2010 1-Hour Sulfur Dioxide NAAQS.	Statewide	6/25/13	10/16/14 [*Insert* **Federal Register** *citation*].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C) (enforcement and minor new source review), (D)(ii), (E)(i) and (iii), (F), (G), (H), (J) (consultation, public notification, and visibility protection), (K), (L), and (M).

[FR Doc. 2014–24658 Filed 10–15–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0888; FRL–9917–61–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Infrastructure SIP Requirements for the 2008 Lead NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of a state implementation plan (SIP) submission by Indiana regarding the infrastructure requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 lead (Pb) national ambient air quality standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The proposed rulemaking associated with today's final action was published on August 19, 2013, and EPA received one comment letter during the comment period, which ended on September 18, 2013. The concerns raised in this letter, as well as EPA's responses, will be addressed in this final action.

DATES: This final rule is effective on November 17, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0888. 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., Confidential Business Information 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 U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of this SIP submission?

A. What does this rulemaking address?

This rulemaking addresses a December 12, 2011, submission from the Indiana Department of Environmental Management (IDEM) intended to meet the applicable infrastructure SIP requirements for the 2008 Pb NAAQS.

B. Why did the state make this SIP submission?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 Pb NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for Pb already meet those requirements.

EPA has highlighted this statutory requirement in multiple guidance documents, including the most recent guidance document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' issued on September 13, 2013.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submission Indiana that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb NAAQS. The requirement for states to make SIP submissions 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 EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

This rulemaking will not cover three substantive areas 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 (collectively referred to as ''director's discretion''); and, (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these substantive areas in separate rulemaking. A detailed rationale, history, and interpretation related to infrastructure SIP requirements can be found in our May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242—27245).

In addition, on a portion of section 110(a)(2)(J)—visibility protection. EPA is also not acting on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. The rationale for not acting on elements of these requirements was included in EPA's August 19, 2013, proposed rulemaking or discussed below in today's response to comments.

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

The public comment period for EPA's proposed actions with respect to Indiana's satisfaction of the infrastructure SIP requirements for the 2008 Pb NAAQS closed on September 18, 2013. EPA received one comment letter, which was from the Sierra Club, and a synopsis of the comments contained in this letter and EPA's responses, are provided below.

Comment 1: The Sierra Club states that on its face the CAA ''requires I–SIPs to be adequate to prevent violations of the NAAQS.'' In support, the commenter quotes the language in section 110(a)(1) which requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which commenters claimed include the maintenance plan requirement. Sierra Club notes the CAA definition of emission limit and reads these provisions together to require ''enforceable emission limitations on source emissions sufficient to ensure maintenance of the NAAQS.''

Response 1: EPA disagrees that section 110 must be interpreted in the manner suggested by Sierra Club. Section 110 is only one provision that is part of the complex structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical

evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA interprets the requirement in section 110(a)(2)(A) that the plan provide for ''implementation, maintenance and enforcement'' to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean that, for purposes of section 110, the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. As EPA stated in ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' dated September 13, 2013 (Infrastructure SIP Guidance), ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both. Overall, the infrastructure SIP submission process provides an opportunity . . . to review the basic structural requirements of the air agency's air quality management program in light of each new or revised NAAQS.'' Infrastructure SIP Guidance at p. 2.

Comment 2: Sierra Club also cites two excerpts from the legislative history of the CAA Amendments of 1970 claiming they support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show maintenance of the NAAQS in all areas of Indiana. Sierra Club also contends that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 2: The CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning demonstrating attainment. In any event, the two excerpts of legislative history the commenter cites merely provide that states should include enforceable emission limits in their SIPs; they do not mention or otherwise address whether states are required to include maintenance plans for all areas of the state as part of the infrastructure SIP.

Comment 3: The commenter cites to 40 CFR 51.112(a), providing that each plan must ''demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS].'' The commenter asserts that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. The commenter states that ''[a]lthough these regulations were developed before the Clean Air Act separated Infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations apply to I–SIPs.'' The commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that ''[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act. . . .'' 51 FR 40656 (November 7, 1986).

Response 3: The commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits ''adequate to prohibit NAAQS violations'' and adequate or sufficient to ensure the maintenance of the NAAQS is not supported. As an initial matter, EPA notes and the commenter recognizes this regulatory provision was initially promulgated and ''restructured and consolidated'' prior to the CAA Amendments of 1990, in which Congress removed all references to ''attainment'' in section 110(a)(2)(A). In addition, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing ''control strategy'' SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as section 175A and 182. The commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's action ''restructuring and consolidating'' provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were ''beyond the scope'' of the rulemaking. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new ''Part D'' attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. Id. at 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new ''part D'' of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (''Control strategy: SO_X and PM (portion)''), 51.14 (''Control strategy: CO, HC, OX and NO_2 (portion)''), 51.80 (''Demonstration of attainment: Pb (portion)''), and 51.82 (''Air quality data (portion)''). Id. at 40660. Thus, the present-day 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

Comment 4: The commenter references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs, and claimed they were actions in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject infrastructure SIPs. The commenter first points to a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the sulfur dioxide (SO_2) NAAQS. In that action, EPA cited section 110(a)(2)(A) as a basis for disapproving a revision to the State plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, commenter cites a 2013 proposed disapproval of a revision to the SO_2 SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the State. EPA relied on 40 CFR 51.112(a) in proposing to reject the revision, stating that the State had not demonstrated that the emission limit was ''redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions.'' EPA further stated in that proposed disapproval that the State had not demonstrated that removal of the limit would not ''affect the validity of the emission rates used in the existing attainment demonstration.''

Response 4: EPA does not agree that the two prior actions referenced by the commenter establish how EPA reviews

infrastructure SIPs. It is clear from both the final Missouri rule and the now final Indiana rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent. EPA's partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP addressed a control strategy SIP and not an infrastructure SIP (71 FR 12623). The Indiana action provides even less support for the commenter's position (78 FR 78720). The review in that rule was of a completely different requirement than the 110(a)(2)(A) SIP. Rather, in that case, the State had an approved SO_2 attainment plan and was seeking to remove from the SIP, provisions relied on as part of the modeled attainment demonstration. EPA determined that the State had failed to demonstrate under section 110(l) of the CAA why the SIP revision would not result in increased SO_2 emissions and thus interfere with attainment of the NAAQS. Nothing in that rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved attainment plan will not interfere with attainment of the NAAQS.

Comment 5: Sierra Club discusses several cases applying to the CAA which Sierra Club claims support their contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent violations of the NAAQS. Sierra Club first cites to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meet the national standards.'' Sierra Club also cites to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS and *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Dept. of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also stated that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The commenter also quotes several additional opinions in this vein. *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174, 1180 (9th Cir. 2012) (''The Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations''); *Hall* v. *EPA* 273 F.3d 1146, 1153 (9th Cir. 2001) (''Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State''). The commenter also cites *Mich. Dept. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS.

Response 5: None of the cases the commenter cites supports the commenter's contention that section 110(a)(2)(A) requires that infrastructure SIPs include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state, nor do they shed light on how section 110(a)(2)(A) may reasonably be interpreted. With the exception of *Train,* 421 U.S. 60, none of the cases the commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, in the context of a challenge to an EPA action, revisions to a SIP that were required and approved as meeting other provisions of the CAA or in the context of an enforcement action, the court references section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background section of its decision.

In *Train,* a case that was decided almost 40 years ago, the Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were ''postponements'' that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus the issue was not whether a section 110 SIP needs to provide for attainment or whether emissions limits are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of ''emissions limitation'' not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). The commenters do not raise any concerns about whether the measures relied on by the state in the infrastructure SIP are ''emissions limitations'' and the decision in this case has no bearing here. In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the court was reviewing a Federal implementation plan that EPA promulgated after a long history of the state failing to submit an adequate state implementation plan. The court cited generally to section 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations but this language was not part of the court's holding in the case. The commenter suggests that *Alaska Dept. of Envtl. Conservation,* 540 U.S. 461, stands for the proposition that

the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the court makes no mention of the changed language. Furthermore, the commenter also quotes the court's statement that ''SIPs must include certain measures Congress specified'' but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's ''new source'' permitting program, not its infrastructure SIP.

Two of the cases the commenter cites, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret CAA section 110(l), the provision governing ''revisions'' to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section 110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

Comment 6: The commenter asserted that Indiana's infrastructure SIP fails to meet the requirements of section 110(a)(2)(A) and section 110(a)(2)(E) because IC 13–14–8–8 contains provisions that would allow the board to grant variances to rules when the rules would impose ''undue hardships or burden.'' The commenter noted that EPA had cited IC 13–14–8 as one of IDEM's mechanisms for satisfying the requirements of section 110(a)(2)(A) and section 110(a)(2)(E), but contended that the variance provisions in IC 13–14–8–8 are too broad and vague to ensure that emission limits and controls are properly enforced, or to ensure that adequate legal authority is provided to carry out Indiana's SIP. Therefore, EPA cannot approve IC 13–14–8 to meet any requirements of section 110.

Response 6: EPA disagrees the commenter's claim that Indiana's infrastructure SIP fails to meet the requirements of section 110(a)(2)(A) and section 110(a)(2)(E). As an initial matter, IC 13–14–8–8 is not a regulation that has been approved into the SIP. Thus, any variance granted by the state pursuant to this provision would not modify the requirements of the SIP. Furthermore, for a variance from the state to be approved into the SIP, a demonstration must be made under CAA section 110(l) showing that the revision does not interfere with any requirements of the act including attainment or maintenance of a NAAQS. We disagree that the existence of this provision as solely a matter of State law means that the State does not have adequate authority to carry out the implementation plan.

Comment 7: The commenter asserted that EPA must disapprove Indiana's infrastructure SIP because it does not address the visibility provisions under section 110(a)(2)(D)(i)(II). The commenter noted that EPA's basis for proposing approval for the visibility protection provisions of section 110(a)(2)(D)(i)(II) was contingent upon EPA's claim that Indiana has an approved regional haze SIP. The commenter contended that Indiana's regional haze SIP was only partially approved and no action has been taken on issues addressing the Best Available Retrofit Technology requirements for EGUs. Therefore, the commenter believes that EPA must disapprove the visibility protection requirements found in section 110(a)(2)(D)(i)(II) for Indiana's infrastructure SIP.

Response 7: Section 110(a)(2)(D)(i)(II) of the CAA requires that states have a SIP, or submit a SIP revision, containing provisions ''prohibiting any source or other type of emission activity within the state from emitting any air pollutant in amounts which will . . . interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] to protect visibility.'' States were required to submit a SIP by December 2007 with measures to address regional haze—visibility impairment that is caused by the emissions of air pollutants from numerous sources located over a wide geographic area. Under the regional haze program, each State with a Class I area must submit a SIP with reasonable progress goals for each such area that provides for an improvement in visibility for the most impaired days and ensures no degradation of the best days.

Because of the often significant impacts on visibility from the interstate transport of pollutants, we interpret the ''good neighbor'' provisions of section 110 of the CAA described above as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. This is consistent with the requirements in the regional haze program which explicitly require each State to address its share of the emission reductions needed to meet the reasonable progress goals for surrounding Class I areas. 64 FR 35714, 35735 (July 1, 1999). States working together through a regional planning process are required to address an agreed upon share of their contribution to visibility impairment in the Class I areas of their neighbors. 40 CFR 51.308(d)(3)(ii). Indiana worked through a regional planning organization, the Midwest Regional Planning Organization (Midwest RPO), and consulted directly with other states to develop strategies to address regional haze in the Class I areas potentially affected by emissions from Indiana.

The commenter is correct that EPA issued a limited disapproval of Indiana's regional haze SIP, but our limited disapproval was based on Indiana's reliance on the Clean Air Interstate Rule (CAIR) to satisfy certain requirements for controlling emissions of SO_2 and NO_X from EGUs. EPA disagrees, however, with the commenter that because Indiana's regional haze SIP did not fully meet certain requirements for controlling emissions of SO_2 and NO_X, EPA must disapprove its infrastructure SIP for Pb.

Pb generally has an insignificant impact on visibility. According to the Memorandum from Mark Schmidt, Office of Air Quality Planning and Standards (OAQPS), when evaluating the extent that Pb could impact visibility, Pb-related visibility impacts were found to be insignificant (e.g., less than 0.10%) (''Ambient Pb's Contribution to Class 1 Area Visibility Impairment,'' June 17, 2011). There is no evidence in Indiana's regional haze SIP to indicate that emissions of Pb from sources in the state were anticipated to cause or contribute to visibility impairment in any Class I area. In addition, nothing in the Indiana regional haze SIP indicates that any state assumed (or requested) that Indiana would be making reductions in emission of Pb to improve visibility. As such, the reasonable progress goals for the Class I areas in nearby states do not reflect any assumptions regarding Pb emissions from Indiana. Given this, we conclude that the Indiana SIP contains adequate measures to ensure that emissions of Pb from sources in the State will not interfere with the reasonable progress goals of nearby Class I areas.

Comment 8: The commenter asserted that EPA must disapprove Indiana's infrastructure SIP because it does not address the visibility protection provisions, as described above, for section 110(a)(2)(J). The commenter contended that EPA did not provide a rationale for why the visibility provisions in section 110(a)(2)(J) are not applicable to the 2008 Pb and 2008 ozone NAAQS.

Response 8: The visibility provisions in section 110(a)(2)(J) are not applicable to the 2008 Pb NAAQS for the following reason. Under 40 CFR part 51 subpart P, implementing the visibility requirements of CAA title I, part C, states are subject to requirements for RAVI, new source review for possible impacts on air quality related values in Class I areas, and regional haze planning. Specific requirements stemming from these CAA sections are codified at 40 CFR 55 part 51, subpart P. However, when the EPA establishes or revises a NAAQS, these requirements under part C do not change. The EPA believes that there are no new visibility protection requirements under part C as a result of a revised NAAQS. Therefore, there are no newly applicable visibility protection obligations pursuant to Element J after the promulgation of a new or revised NAAQS.

Comment 9: The commenter asserted that EPA must clarify two repealed regulations that were cited in the proposed rulemaking. Specifically, the commenter observed that EPA cited 326 IAC 11–5 as helping Indiana satisfy the requirements of section 110(a)(2)(G) ''Emergency Powers'' and IC 13–4–8 which was cited to satisfy section 110(a)(2)(H), ''Future SIP Revisions.''

Response 9: EPA did not intend to engender any confusion with these citations. The commenter is correct in noting that 326 IAC 11–5 has been repealed. That rule was of little relevance to section 110(a)(2)(G) and was incorrectly cited; the correct citation that was provided by IDEM is SIP-approved IAC 1–5, ''Alert Levels.'' In a similar manner, IDEM provided IC 13–14–8 as helping to meet the requirements under section 110(a)(2)(H), but EPA incorrectly cited IC 13–4–8.

Comment 10: The commenter asserted that EPA must disapprove portions of Indiana's infrastructure SIP for the 2008 Pb NAAQS addressing certain $PM_{2.5}$ requirements under section 110(a)(2)(C). In particular, the commenter objected that Indiana has not codified the increments for areas designated Class I or Class III for $PM_{2.5.}$ The commenter noted that while Indiana does not have Class I or Class III areas, the increments for Class I and Class III areas are still a requirement to satisfy section 110(a)(2)(C). The commenter contends it is insufficient for EPA to ''hope'' that the state will adopt the increments if areas in the state are later redesignated to Class I or Class III, and therefore EPA must disapprove this section of Indiana's infrastructure SIP.

Response 10: EPA disagrees with the commenter's view that Indiana's infrastructure SIP related to section 110(a)(2)(C) must be disapproved because the state has not codified the $PM_{2.5}$ increments for Class I and Class III areas as provided at 40 CFR 52.166(c) and 40 CFR 52.21(c). As explained in the August 19, 2013 proposed approval, Indiana does not currently have any areas designated Class I or Class III for $PM_{2.5}$. Accordingly, EPA does not consider the $PM_{2.5}$ increments for Class I and Class III areas to be necessary for the implementation of PSD permitting in Indiana at this time. In the event that areas in Indiana are one day classified as Class I or Class III, EPA expects IDEM to adopt these increments and submit them for incorporation into the SIP (*see* 78 FR 50360 at 50364). Section 40 CFR 51.166(g)(1) and 52.21(g)(1) specify that if a state seeks to have an area reclassified to either Class I or Class III, it must submit such a request as a revision to its SIP for approval by the EPA Administrator. Thus, no areas in Indiana can be reclassified to Class I or Class III without EPA approval, and the process of evaluating such a request for approval requires a notice-and-comment rulemaking process. The EPA and other interested parties can evaluate the adequacy of Indiana's PSD regulations as they apply to the proposed reclassified area at that time and, if necessary, initiate a process to cure any identified deficiency. However, at this time, EPA does not believe there to be an applicability gap for the $PM_{2.5}$ increments as they apply in the state of Indiana.

III. What action is EPA taking?

For the reasons discussed in our August 19, 2013, proposed rulemaking and in the above responses to public comments, EPA is taking final action to approve, as proposed, Indiana's infrastructure SIPs for the 2008 Pb NAAQS. In EPA's August 19, 2013, proposed rulemaking for these infrastructure SIPs, we also proposed to approve Indiana's satisfaction of the state board requirements contained in section 128 of the CAA, as well as certain PSD requirements obligated by EPA's October 20, 2010, final rule on the ''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)'' (2010 NSR Rule). The final approvals for each of the above requirements were published in the **Federal Register** on December 24, 2013 (*see* 78 FR 77599, state board requirements), July 2, 2014 (*see* 79 FR 37646, 2010 NSR Rule requirements) and August 11, 2013 (see 79 FR 46709, 2010 NSR Rule requirements, continued). EPA also proposed rulemaking on the 2008 ozone NAAQS and will be taking final action in a separate rulemaking. In today's rulemaking, we are taking final action on only the infrastructure SIP requirements for the 2008 Pb NAAQS. Our final actions by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Pb NAAQS
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD Provisions for Pb and ozone	A
(C)3: $PM_{2.5}$ precursors and $PM_{2.5}/PM_{10}$ condensables for PSD	A
(C)4: $PM_{2.5}$ increments for PSD	A
(C)5: GHG permitting thresholds in PSD regulations	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A
(D)2: PSD	**
(D)3: Visibility Protection	A
(D)4: Interstate Pollution Abatement	A
(D)5: International Pollution Abatement	A
(E)1: Adequate resources	A
(E)2: State boards	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	NA
(J)1: Consultation with government officials	A
(J)2: Public notification	A
(J)3: PSD	**
(J)4: Visibility protection (Regional Haze)	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the table above, the key is as follows:

A	Approve.
NA	No Action/Separate Rulemaking.
D	Disapprove.
+	Not relevant in these actions.
**	Previously discussed in element (C).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations.

42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive 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 CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: September 30, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. Amend § 52.770, paragraph (e) table by adding an entry in alphabetical order for ''Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* *	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS.	12/12/2011	10/16/2014, [INSERT **FEDERAL REGISTER** CITATION].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
* *	*	*	* * *

[FR Doc. 2014–24493 Filed 10–15–14; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0969; EPA–R05–OAR–2012–0991; EPA–R05–OAR–2013–0435; FRL–9917–60–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Infrastructure SIP Requirements for the 2008 Ozone, 2010 NO_2, and 2010 SO_2 NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve some elements and disapprove other elements of a state implementation plan (SIP) submission from Illinois regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. Illinois already administers Federally promulgated regulations that address the disapprovals described in this rulemaking. Therefore, the state will not be obligated to submit any new or additional regulations as a result of this final disapproval. The proposed rulemaking associated with this final action was published on July 14, 2014, and EPA received one comment letter during the comment period, which ended on August 13, 2014. The concerns raised in this letter, as well as EPA's responses, will be addressed in this final action.

DATES: This final rule is effective on November 17, 2014.

ADDRESSES: EPA has established dockets for this action under Docket ID No. EPA–R05–OAR–2011–0969 (2008 ozone infrastructure SIP elements), Docket ID No. EPA–R05–OAR–2012–0991 (2010 NO_2 infrastructure SIP elements), and Docket ID No. EPA–R05–OAR–2013–0435 (2010 SO_2 infrastructure SIP elements). 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., Confidential Business Information 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 U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of these SIP submissions?

A. What state SIP submissions does this rulemaking address?

This rulemaking addresses a December 31, 2012, submission and a June 11, 2014, clarification from the Illinois Environmental Protection Agency (Illinois EPA) intended to address all applicable infrastructure requirements for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA has highlighted this statutory requirement in multiple guidance documents, including the most recent guidance document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' issued on September 13, 2013.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submission from Illinois that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone, 2010 NO_2, and 2010 SO_2 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 EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

This rulemaking will not cover three substantive areas 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