taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a safety zone on a portion of Mission Bay, south of Fiesta Island and all navigable waters within 600 feet of the fireworks barge, located in approximate position 32°46′03″ N, 117°13′11″ W.

This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–620 to read as follows:

§ 165.T11–620 Sea World San Diego Fireworks, Mission Bay; San Diego, CA.

(a) *Location.* The safety zone will include the area within 600 feet of the fireworks barge in approximate position 32°46′03″ N, 117°13′11″ W.

(b) *Enforcement Period.* This rule is effective and will be enforced from 8:50 p.m. to 10 p.m. on March 18, March 20, March 21, and March 22, 2014.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Joint Harbor Operations Center (JHOC). The Coast Guard Sector San Diego JHOC can be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard or designated patrol personnel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: February 20, 2014.

S. M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2014–05722 Filed 3–17–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0510; FRL–9908–04–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The Commonwealth of Virginia has made a submittal addressing the infrastructure requirements for the 2010 nitrogen dioxide (NO_2) NAAQS.

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

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2013–0510. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On August 5, 2013 (78 FR 47264), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia proposing approval of Virginia's May 30, 2013 submittal to satisfy several requirements of section 110(a)(2) of the CAA for the 2010 NO_2 NAAQS. In the NPR EPA proposed approval of the following infrastructure elements: Sections 110(a)(2)(A), (B), (C) (for enforcement and regulation of minor sources and minor modifications), (D)(i)(II) (for visibility protection), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J) (relating to consultation, public notification, and visibility protection requirements), (K), (L), and (M), or portions thereof. EPA is taking separate rulemaking action on the portions of section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to Virginia's prevention of significant deterioration (PSD) program and on section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards). Virginia did not submit section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the three year submission deadline of section 110(a)(1), and will be addressed in a separate process. Virginia also did not include a component to address section 110(a)(2)(D)(i)(I) as it is not required in accordance with the *EME Homer City* decision from the United States Court of Appeals for the District of Columbia Circuit, until EPA has defined a state's contribution to nonattainment or interference with maintenance in another state. *See EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), *cert. granted,* 2013 U.S. LEXIS 4801 (2013). Unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, states such as Virginia are not required to submit section 110(a)(2)(D)(i)(I) SIPs until the EPA has quantified their obligations under that section. Therefore, EPA is not acting on 110(a)(2)(D)(i)(I) for the 2010 NO_2 NAAQS as Virginia made no submission for this element.

The rationale supporting EPA's proposed action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available online at *www.regulations.gov*, Docket ID Number EPA–R03–OAR–2013–0510.

II. Public Comments and EPA's Responses

EPA received a single set of comments on the August 5, 2013 proposed rulemaking action of Virginia's 2010 NO_2 infrastructure SIP. These comments were provided by the National Parks Conservation Association (hereinafter referred to as ''the commenter''), and raised concerns with regard to EPA's NPR. A full set of these comments is provided in the docket for today's final rulemaking action.

Comment 1: The commenter contends that EPA should disapprove Virginia's 2010 NO_2 infrastructure SIP revision with regard to the visibility component of 110(a)(2)(D)(i)(II) because it relies upon reductions from the Clean Air Interstate Rule (''CAIR''). The commenter references the litigation in the D.C. Circuit related to CAIR, asserting that CAIR is not permanent and enforceable and Virginia's reliance upon CAIR for its visibility protection duties under the CAA renders its reductions temporary, unenforceable, and illegal. The commenter asserts that EPA could not rely on CAIR to support its proposed approval of the visibility prong of Virginia's 2010 NO_2 infrastructure revision. The commenter states that EPA must also disapprove Virginia's 2010 NO_2 infrastructure SIP revision because it is inconsistent with the congressional mandate in section 169A for the use of best available retrofit technology (BART) to improve visibility in Class I areas. The commenter also states that EPA and Virginia cannot use CAIR as a substitute for the explicitly mandated BART provisions of the CAA because it does not meet any exemptions allowed under the CAA. Additionally, the commenter states that compliance with CAIR does not meet any requirement for such an exemption as it does not impact the threshold BART issue of contribution to visibility impairment. The commenter states that there is simply no basis in the CAA to support a BART substitute, like CAIR, that has not been demonstrated to produce greater visibility improvement in all Class I areas.

Furthermore, the commenter states that the requirements in ''51 CFR 51.308(d)'' for reasonable progress goals, calculation of baseline and natural visibility conditions, and a long term strategy cannot be satisfied by broadly averaging emissions or visibility over a number of different Class I areas.[1] The commenter states reasonable progress should be measured on an area-by-area basis to account for variability in source contribution and visibility conditions. The commenter asserts that if EPA approves Virginia's CAIR visibility prong and allows CAIR-based exemptions to substitute emission reductions by non-BART sources for those from BART sources, BART sources will be controlled at levels less stringent than the application of source-by-source BART would require and additionally asserted there is no guarantee that CAIR's nitrogen oxide (NO_X) reductions would occur at BART sources. The commenter claims EPA must disapprove the visibility provision in Virginia's 2010 NO_2 infrastructure SIP because CAIR was ''vacated,'' is not permanent and enforceable, and does not meet the requirements of section 169A of the CAA.

Response 1: EPA disagrees with the commenter that it must disapprove the visibility provision in Virginia's 2010 NO_2 infrastructure SIP. First, EPA notes that CAIR has not been ''vacated'' as stated in the comment. As mentioned in EPA's TSD, CAIR was ultimately remanded by the D.C. Circuit to EPA without vacatur, and EPA continues to implement CAIR.[2] As explained in detail in today's rulemaking action, EPA believes that in light of the D.C. Circuit's subsequent decision to vacate the EPA rule known as the Cross State Air Pollution Rule (CSAPR), also known as the Transport Rule (*see EME Homer City,* 696 F.3d 7), and the court's order for EPA to ''continue administering CAIR pending the promulgation of a

[1] EPA notes that the Commenter inadvertently referred to 51 CFR 51.308(d). EPA assumes the commenter meant to refer to 40 CFR 51.308(d) which is the relevant provision requiring reasonable progress goals, calculation of baseline and natural visibility conditions, and a long term strategy.

[2] *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008) (finding CAIR inconsistent with requirements of CAA) and *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008) (remanding CAIR to EPA without vacatur because it found that ''allowing CAIR to remain in effect until it is replaced by a rule consistent with [the court's] opinion would at least temporarily preserve the environmental values covered by CAIR'').

valid replacement,'' it is appropriate for EPA to rely at this time on CAIR to support approval of Virginia's 2010 NO_2 infrastructure revision as it relates to the visibility prong. EPA has been ordered by the D.C. Circuit to develop a new rule, and to continue implementing CAIR in the meantime. Unless the Supreme Court reverses or otherwise modifies the D.C. Circuit's decision on CSAPR in *EME Homer City,* EPA does not intend to act in a manner inconsistent with the decision of the D.C. Circuit. Based on the current direction from the court to continue administering CAIR, EPA believes that it is appropriate to rely on CAIR emission reductions for purposes of assessing the adequacy of Virginia's infrastructure SIP revision with respect to prong 4 of section 110(a)(2)(D)(i)(II) for visibility protection while a valid replacement rule is developed and until submissions complying with any such new rule are submitted by the states and acted upon by EPA or until the *EME Homer City* case is resolved in a way that provides different direction regarding CAIR and CSAPR.[3]

Furthermore, as neither the Commonwealth nor EPA has taken any action to remove CAIR from the Virginia SIP, CAIR remains part of the federally-approved SIP and can be considered in determining whether the SIP as a whole meets the requirement of prong 4 of 110(a)(2)(D)(i)(II). EPA is taking final action to approve the infrastructure SIP submission with respect to prong 4 because Virginia's regional haze SIP, which EPA has approved in combination with its SIP provisions to implement CAIR adequately prevents sources in Virginia from interfering with measures adopted by other states to protect visibility during the first planning period.[4]

EPA disagrees with the commenter that the CAA does not allow states to rely on an alternative program such as CAIR in lieu of source-specific BART. EPA's regulations allowing states to adopt alternatives to BART that provide for greater reasonable progress, and EPA's determination that states may rely on CAIR to meet the BART requirements, have been upheld by the D.C. Circuit as meeting the requirements of the CAA. In the first case challenging the provisions in the regional haze rule allowing for states to adopt alternative programs in lieu of BART, the court affirmed EPA's interpretation of CAA section 169A(b)(2) as allowing for alternatives to BART where those alternatives will result in greater reasonable progress than BART. *Center for Energy and Economic Development* v. *EPA,* 398 F.3d 653, 660 (D.C. Cir. 2005) (finding reasonable the EPA's interpretation of CAA section 169A(b)(2) as requiring BART only as necessary to make reasonable progress). In the second case, *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333 (D.C. Cir. 2006), the court specifically upheld EPA's determination that states could rely on CAIR as an alternative program to BART for EGUs in the CAIR-affected states. The court concluded that the EPA's two-pronged test for determining whether an alternative program achieves greater reasonable progress was a reasonable one and also agreed with EPA that nothing in the CAA required the EPA to ''impose a separate technology mandate for sources whose emissions affect Class I areas, rather than piggy-backing on solutions devised under other statutory categories, where such solutions meet the statutory requirements.'' *Id.* at 1340.

More fundamentally, EPA disagrees with the commenter that the adequacy of the BART measures in the Virginia regional haze SIP is relevant to the question of whether the Commonwealth's SIP meets the requirements of section 110(a)(2)(D)(i) of the CAA with respect to visibility. EPA interprets the visibility provisions in this section of the CAA 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. The regional haze rule includes a similar requirement. *See* 40 CFR 51.308(d)(3). EPA notes that on June 13, 2012, EPA determined that Virginia's regional haze SIP adequately prevents sources in Virginia from interfering with the reasonable progress goals adopted by other states to protect visibility during the first planning period. *See* 77 FR 35287. *See also* 77 FR 3691, 3709 (January 25, 2012) (proposing approval of Virginia's regional haze SIP). As EPA's review of the Virginia regional haze SIP explains, the Commonwealth relied on enforceable emissions reductions already in place to address the impacts of Virginia on out-of-state Class I areas. The question of whether or not CAIR satisfies the BART requirements has no bearing on whether these measures meet the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility.

Therefore, EPA disagrees with the commenter that EPA must disapprove the visibility provision in Virginia's 2010 NO_2 infrastructure SIP because CAIR does remain in effect and is enforceable. EPA also notes that while the adequacy of the BART provisions in the Virginia regional haze SIP is irrelevant to the question of whether the plan meets the requirements of section 110(a)(2)(D)(i)(II), CAIR was upheld as an alternative to BART in accordance with the requirements of section 169A of the CAA by the D.C. Circuit in *Utility Air Regulatory Group* v. *EPA.*

Comment 2: The commenter states that EPA should disapprove the visibility prong of Virginia's 2010 NO_2 infrastructure revision because the commenter asserts that Virginia failed to submit its five year progress review for regional haze by the required date. The commenter references a July 17, 2008 SIP submittal from Virginia as the basis for determining when the five year progress report for regional haze was due.

Response 2: EPA disagrees with the comment that Virginia failed to submit its five year progress report by the required date. Virginia's five year progress report for 40 CFR 51.308(g) is not due until October 4, 2015. The Commonwealth of Virginia submitted several regional haze SIP submissions between 2008 and 2010. On July 17, 2008, Virginia submitted to EPA the first of many SIP revisions addressing portions of the regional haze requirements. This first submission contained a permit and a BART determination for one source in Virginia. Virginia submitted three additional SIP revisions containing permits and BART determinations addressing specific sources on March 6, 2009, January 14, 2010, and November

[3] Since the vacatur of CSAPR in August 2012 and with continued implementation of CAIR per the direction of the D.C. Circuit in *EME Homer City,* EPA has approved redesignations of areas to attainment of the 1997 fine particulate matter ($PM_{2.5}$) NAAQS in which states have relied on CAIR as an enforceable measure. *See* 77 FR 76415 (December 28, 2012) (redesignation of Huntington-Ashland, West Virginia for 1997 $PM_{2.5}$ NAAQS, which was proposed 77 FR 68076 (November 15, 2012)); 78 FR 59841 (September 30, 2013) (redesignation of Wheeling, West Virginia for 1997 $PM_{2.5}$ NAAQS, which was proposed 77 FR 73575 (December 11, 2012)); and 78 FR 56168 (September 12, 2013) (redesignation of Parkersburg, West Virginia for 1997 $PM_{2.5}$ NAAQS, which was proposed 77 FR 73560 (December 11, 2012)).

[4] Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.* Therefore, EPA believes it is appropriate to approve Virginia's 2010 NO_2 NAAQS infrastructure SIP for section 110(a)(2)(D)(i)(II) as it meets the requirements of that section despite the limited approval status of Virginia's regional haze SIP.

19, 2010. A May 6, 2011 SIP revision also included a permit for a source for purposes of reasonable progress. Although the July 2008, March 2009, January 2010, November 2010, and May 2011 SIP revision submittals from Virginia included BART and reasonable progress determinations for specific sources in Virginia, the Commonwealth did not submit a comprehensive regional haze plan until October 4, 2010. This plan included the reasonable progress goals for Virginia's Class I areas, calculations of baseline and natural visibility conditions, a long-term strategy for regional haze, additional BART determinations, and a monitoring strategy.

Given this, EPA considers the appropriate regional haze SIP submission which Virginia should be evaluating in the progress report required by 40 CFR 51.308(g) is the October 4, 2010 submission. Consequently, Virginia's five year progress report for 40 CFR 51.308(g) is not due until October 4, 2015, five years from the first regional haze SIP submittal which comprehensively addressed 40 CFR 51.308(d) and (e).

Finally, EPA notes that on November 8, 2013 Virginia submitted its five year progress report for 40 CFR 51.308(g) significantly in advance of its October 4, 2015 due date. On February 11, 2014, EPA signed a separate rulemaking action proposing approval of that report. EPA's review of emissions data from Virginia's five year progress report shows that emissions of the key visibility-impairing pollutant for the southeast, sulfur dioxide (SO_2), continued to drop from 428,070 tons per year (tpy) in 2002 to 268,877 tpy in 2007 to 115,436 tpy in 2011. The emissions inventories also show similar substantial declines in other pollutants, particularly NO_X, between 2007 and 2011.

In summary, EPA believes that it appropriately proposed approval of Virginia's infrastructure SIP revision for the 2010 NO_2 NAAQS for the structural visibility protection requirements in 110(a)(2)(D)(i)(II) because that progress report was not yet due on the date of EPA's publication of the proposal. Therefore, EPA finds Virginia has met the basic structural visibility protection requirements in 110(a)(2)(D)(i)(II).

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the following infrastructure elements or portions thereof of Virginia's SIP revision: Sections 110(a)(2)(A), (B), (C) (for enforcement and regulation of minor sources and minor modifications), (D)(i)(II) (for visibility protection), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J) (relating to consultation, public notification, and visibility protection requirements), (K), (L), and (M), or portions thereof as a revision to the Virginia SIP. EPA is taking separate rulemaking action on the portions of section 110(a)(2)(C), (D)(i)(II), and (J) as they relate to Virginia's PSD program and section 110(a)(2)(E)(ii) as it relates to section 128 (State Boards). This rulemaking action does not include section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the three year submission deadline of section 110(a)(1), and will be addressed in a separate process. This rulemaking action also does not include proposed action on section 110(a)(2)(D)(i)(I), because this element, or portions thereof, is not required to be submitted by a state until the EPA has quantified a state's obligations and Virginia's SIP submittal did not include this element. *See EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), *cert. granted,* 2013 U.S. LEXIS 4801 (2013).

V. Statutory and Executive Order Reviews

A. General Requirements

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).

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 May 19, 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, addressing certain infrastructure requirements of section 110(a)(2) of the CAA for the 2010 NO_2 NAAQS for the Commonwealth of 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, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: March 3, 2014.

W.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 VV—Virginia

■ 2. Section 52.2420 is amended in paragraph (e), by adding an entry for ''Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide NAAQS'' at the end of the table to read as follows:

§ 52.2420 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 Nitrogen Dioxide NAAQS.	Statewide	5/30/13	3/18/14 *[Insert Federal Register page number where the document begins].*	This action addresses the following CAA elements, or portions thereof: 110(a)(2) (A), (B), (C), (D)(i)(II), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M) with the exception of PSD elements.

[FR Doc. 2014–05808 Filed 3–17–14; 8:45 am]

BILLING CODE 6560–50–P