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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2014-0604; FRL-9958-73-Region 1]

Air Plan Approval; VT; Infrastructure State Implementation Plan Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) submissions from Vermont regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 1997 fine particle matter ($PM_{2.5}$), 1997 ozone, 2006 $PM_{2.5}$, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). We also are proposing to approve two statutes and one Executive Order submitted by Vermont in support of its demonstration that the infrastructure requirements of the CAA have been met. In addition, we are conditionally approving certain elements of Vermont's submittals relating to prevention of significant deterioration (PSD) requirements. Last, we are proposing to update the classification for two of Vermont's air quality control regions for SO_2 based on recent air quality monitoring data collected by the state, which will grant the state an

exemption from the infrastructure SIP contingency plan obligation for SO_2. 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.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2014-0604, at www.regulations.gov, or via email to arnold.anne@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or

other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit https://www.epa.gov/dockets/commenting-epa-dockets.

Publicly available docket materials are available either electronically in www.regulations.gov or at the U.S. Environmental Protection Agency, Region 1, Air Programs Branch, 5 Post Office Square, Boston, Massachusetts. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1684; simcox.alison@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:

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V. What action is EPA taking?

VI. Incorporation by Reference

VII. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).

2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these SIP submissions?

A. What Vermont SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the Vermont Department of Environmental Conservation (VT DEC). The state submitted its infrastructure SIP for each NAAQS on the following dates: 1997 $PM_{2.5}$[1] - February 18, 2009; 1997 ozone –

1 $PM_{2.5}$ refers to particulate matter of 2.5 microns or less in diameter, often

February 18, 2009; 2006 $PM_{2.5}$ – May 21, 2010; 2008 Pb – July 29, 2014; 2008 ozone – November 2, 2015; 2010 NO_2 – November 2, 2015; and 2010 SO_2 – November 2, 2015.

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 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 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 highlighted this statutory requirement in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2009 Memo), followed by the October 14,

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referred to as "fine" particles.

2011, "Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)" (2011 Memo). Most recently, EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2) and address the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from Vermont that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 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 sections 110(a)(1) and 110(a)(2). Pursuant to these sections, each state must submit a SIP that provides for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. States must make such SIP submission "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a new or revised NAAQS." This requirement is triggered by the

promulgation of a new or revised NAAQS and is not conditioned upon EPA's taking any other action. Section 110(a)(2) includes the specific elements that "each such plan" must address.

EPA commonly refers to such 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.

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 at sources ("SSM" emissions) 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"); and, (iii) existing provisions for PSD programs that may be inconsistent with current

requirements of EPA's "Final New Source Review (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 separately. A detailed history, interpretation, and rationale for EPA's approach to infrastructure SIP requirements can be found in EPA's 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 27242-45.

III. What guidance is EPA using to evaluate these SIP submissions?

EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate. Historically, EPA has elected to use non-binding guidance documents to make recommendations for states' development and EPA review of infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA guidance applicable to these infrastructure SIP submissions is embodied in several documents. Specifically, attachment A of the 2007 Memo (Required Section

110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. The 2009 Memo provides additional guidance for certain elements regarding the 2006 $PM_{2.5}$ NAAQS, and the 2011 Memo provides guidance specific to the 2008 Pb NAAQS. Lastly, the 2013 Memo identifies and further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

IV. What is the result of EPA's review of these SIP submissions?

EPA is soliciting comment on our evaluation of Vermont's infrastructure SIP submissions in this notice of proposed rulemaking. In each of Vermont's submissions, a detailed list of Vermont Laws and, previously SIP-approved Air Quality Regulations, show precisely how the various components of its EPA-approved SIP meet each of the requirements of section 110(a)(2) of the CAA for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, as applicable. The following review evaluates the state's submissions in light of section 110(a)(2) requirements and relevant EPA guidance.

A. Section 110(a)(2)(A) – Emission limits and other control measures.

This section (also referred to in this action as an element) of the Act requires SIPs to include enforceable

emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[2] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Vermont's infrastructure submittals for this element cite Vermont Statutes Annotated (V.S.A) and several Vermont Air Pollution Control Regulations (VT APCR) as follows:

Vermont's 10 V.S.A. § 554, "Powers," authorizes the Secretary of the Vermont Agency of Natural Resources (ANR) to "[a]dopt, amend and repeal rules, implementing the provisions" of Vermont's air pollution control laws set forth in 10 V.S.A. chapter 23. It also authorizes the Secretary to "conduct studies, investigations and research relating to air contamination and air pollution" and to "[d]etermine by appropriate means the degree of air contamination and air pollution in the state and the several parts thereof." Ten V.S.A. § 556, "Permits for the construction or modification of air contaminant sources,"

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2 *See*, *e.g.*, EPA's final rule on "National Ambient Air Quality Standards for Lead." 73 FR 66964, 67034 (Nov. 12, 2008).

requires applicants to obtain permits for constructing or modifying air contaminant sources, and 10 V.S.A. § 558, "Emission control requirements," authorizes the Secretary "to establish emission control requirements … necessary to prevent, abate, or control air pollution."

The Vermont submittals cite more than 20 specific rules that the state has adopted to control the emissions of Pb, SO_2, $PM_{2.5}$, volatile organic compounds[3] (VOCs), and NO_x. A few, with their EPA approval citation[4] are listed here: § 5-201 – Open Burning Prohibited (63 FR 19825; April 22,1998); § 5-251 – Control of Nitrogen Oxides Emissions (81 FR 50342; August 1, 2016); § 5-252 – Control of Sulfur Dioxide Emissions (81 FR 50342; August 1, 2016); § 5-253.5 – Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities (81 FR 23164; April 20, 2016); § 5-253.14 – Solvent Metal Cleaning (63 FR 19825; April 22, 1998); § 5-261 – Control of Hazardous Air Contaminants (47 FR 6014; February 10, 1982); § 5-502 – Major Stationary Sources and Major Modifications (81 FR 50342; August 1, 2016); § 5-702 – Excessive Smoke Emissions from Motor Vehicles (45 FR 10775; February 19, 1980).

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3 VOCs and NOx contribute to the formation of ground-level ozone.
4 The citations reference the most recent EPA approval of the stated rule, or of revisions to the rule. For example, §5-252 was initially approved on February 4, 1977 (42 FR 6811), with various revisions being approved since then, with the most recent approval of revisions to the applicability section occurring on August 1, 2016 (81 FR 50342).

On July 25, 2014, VT DEC submitted a SIP revision that contained provisions that revise the state's Ambient Air Quality Standards for the criteria air pollutants. On August 1, 2016 (81 FR 50342), EPA approved the following sections within VT APCR Subchapter III, Ambient Air Quality Standards: Section 5-301, "Scope," Section 5-302, "Sulfur oxides (sulfur dioxide)," Section 5-304, "Particulate Matter $PM_{2.5}$," Section 5-306, "Particulate Matter PM_{10}," Section 5-307, "Carbon Monoxide," Section 5-308, "Ozone," Section 5-309, "Nitrogen Dioxide," and Section 5-310, "Lead." Because the state adopted these standards in 2014, Vermont's regulations do not contain an ambient air quality standard for ozone that is equivalent to the federal 2015 ozone standard. However, the ozone standard that EPA approved on August 1, 2016 is consistent with the 2008 federal ozone standard.

The VT regulations listed above were previously approved into the VT SIP by EPA. *See* 40 CFR 52.2370. In addition, VT DEC requests in its November 2, 2015 submittals that 10 V.S.A. § 554 be included in the SIP, which is discussed further below and EPA proposes to approve. Based upon EPA's review of the submittals, EPA proposes that Vermont meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B) – Ambient air quality monitoring/data system.

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

State law authorizes the Secretary of ANR, or her authorized representative, to "conduct studies, investigations and research relating to air contamination and air pollution" and to "[d]etermine by appropriate means the degree of air contamination and air pollution in the state and the several

parts thereof." *See* 10 V.S.A. § 554(8) and (9).[5] Vermont DEC, one of several departments within ANR, operates an air quality monitoring network, and EPA approved the state's 2016 Annual Air Monitoring Network Plan for $PM_{2.5}$, Pb, ozone, NO_2, and SO_2 on September 12, 2016.[6] Furthermore, VT DEC populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that VT DEC has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

C. Section 110(a)(2)(C) – Program for enforcement of control measures and for construction or modification of stationary sources

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160 – 169B) addresses PSD, while part D of the CAA (sections 171 – 193) addresses NNSR requirements.

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5 As noted earlier, EPA proposes in this action to approve 10 V.S.A. § 554 into the SIP.
6 *See* EPA approval letter located in the docket for this action.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications. A discussion of greenhouse gas (GHG) emissions permitting and the "Tailoring Rule"[7] is included within our evaluation of the PSD provisions of Vermont's submittals.

Sub-element 1: Enforcement of SIP measures

State law provides the Secretary of ANR with the authority to enforce air pollution control requirements, including 10 V.S.A. § 554, which EPA is proposing to approve into the SIP, and which authorizes the Secretary of ANR to "[i]ssue orders as may be necessary to effectuate the purposes of [the state's air pollution control laws] and enforce the same by all appropriate administrative and judicial proceedings." In addition, Vermont's SIP-approved regulations VT APCR § 5-501, "Review of

7 In EPA's April 28, 2011 proposed rulemaking for infrastructure SIPs for the 1997 ozone and $PM_{2.5}$ NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (*See* 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS (*See* 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address Pb, NO_x as a precursor to ozone, $PM_{2.5}$ precursors, $PM_{2.5}$ and PM_{10} condensables, $PM_{2.5}$ increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2008 Pb NAAQS.

Construction or Modification of Air Contaminant Sources," and VT APCR § 5-502, "Major Stationary Sources and Major Modifications," establish requirements for permits to construct, modify or operate major air contaminant sources.

EPA proposes that Vermont has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-element 2: PSD program for major sources and major modifications.

Prevention of significant deterioration (PSD) applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS. Vermont DEC's EPA-approved PSD rules, contained at VT APCR Subchapters I, IV, and V, contain provisions that address applicable requirements for all regulated NSR pollutants, including GHGs.

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard – Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final

Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_x as a precursor to ozone. *See* 70 FR 71679, 71699-700. This requirement was codified in 40 CFR 51.166, and requires that states submit SIP revisions incorporating the requirements of the rule, including provisions that would treat NO_x as a precursor to ozone provisions. These SIP revisions were to have been submitted to EPA by states by June 15, 2007. *See* 70 FR 71683.

Vermont has amended its VT APCR § 5-101 to include NO_x and VOC as precursor pollutants to ozone in defining a "significant" increase in actual emissions from a source of air contaminants. In a letter dated November 21, 2016, VT DEC committed to submit its revised regulation to EPA for approval into the Vermont SIP by no later than one year after the effective date of EPA's final action on the pending infrastructure SIPs (I-SIPs).

Therefore, we are proposing to conditionally approve the requirements of section 110(a)(2)(C), as obligated by the Phase 2 Rule, for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)" (2008 NSR

Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of $PM_{2.5}$, otherwise known as precursors. In the 2008 rule, EPA identified precursors to $PM_{2.5}$ for the PSD program to be SO_2 and NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient $PM_{2.5}$ concentrations.

The explicit references to SO_2, NO_x, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i)(*b*) and 40 CFR 52.21(b)(50)(i)(*b*). As part of identifying pollutants that are precursors to $PM_{2.5}$, the 2008 NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define "significant" for $PM_{2.5}$ to mean the following emissions rates: 10 tons per year

(tpy) of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_x (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_x emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011. *See* 73 FR 28321 at 28341.[8]

On August 1, 2016, EPA approved revisions to Vermont's PSD program at VT APCR § 5-101 that identify SO_2 and NO_x as precursors to $PM_{2.5}$ and revise the state's regulatory definition of "significant" for $PM_{2.5}$ to mean 10 tpy or more of direct $PM_{2.5}$ emissions, 40 tpy or more of SO_2 emissions, or 40 tpy or more of NO_x emissions. (81 FR 50342). Consequently, EPA proposes that

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8 EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM_{10} nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council v. EPA*, No. 08-1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's approval of Vermont's infrastructure SIP as to Elements C, D(i)(II), or J with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

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

Vermont's SIP incorporates the necessary changes obligated by the 2008 NSR Rule with respect to provisions that explicitly identify precursors to $PM_{2.5}$.

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in NSR permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits beginning on or after January 1, 2011. *See* 73 FR 28321 at 28334. This requirement is codified in 40 CFR 51.166(b)(49)(i)(*a*) and 40 CFR 52.21(b)(50)(i)(*a*). Revisions to states' PSD programs incorporating the inclusion of condensables were required be submitted to EPA by May 16, 2011. *See* 73 FR 28321 at 28341.

Vermont's SIP-approved PSD program defines "$PM_{2.5}$ direct emissions" and "PM_{10} emissions" to include "gaseous emissions from a source or activity which condense to form particulate matter at ambient temperature." *See* VT APCR § 5-101. EPA approved these definitions into the SIP on August 1, 2016 (81 FR 50342). Consequently, we propose that the state's PSD program adequately accounts for the condensable fraction of $PM_{2.5}$ and PM_{10}.

Therefore, we are proposing that Vermont has met this set of requirements of section 110(a)(2)(C) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS regarding the requirements obligated by the 2008 NSR Rule.

On October 20, 2010 (75 FR 64864), EPA issued the 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). This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of "increments," which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. $PM_{2.5}$ increment values are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c). On September 14, 2016 (81 FR 63102), EPA approved Vermont's codification of these increments in Table 2 of the VT APCR.

The 2010 NSR Rule also established a new "major source baseline date" for $PM_{2.5}$ as October 20, 2010, and a new trigger date for $PM_{2.5}$ of October 20, 2011 in the definition of "minor source baseline date." These revisions are codified in 40 CFR 51.166(b)(14)(i)(*c*) and (b)(14)(ii)(*c*), and 40 CFR 52.21(b)(14)(i)(*c*) and (b)(14)(ii)(*c*). Lastly, the 2010 NSR Rule revised the definition of "baseline area" to include a level of

significance (SIL) of 0.3 micrograms per cubic meter (μg/m^3), annual average, for $PM_{2.5}$. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

On August 1, 2016 (81 FR 50342) and September 14, 2016 (81 FR 63102), EPA approved revisions to the Vermont SIP that address certain aspects of EPA's 2010 NSR rule. However, the state has not defined a method for determining the amount of PSD increments available to a new or modified major source. In a letter dated November 21, 2016, VT DEC committed to revising its NSR regulations to address the methodology for determining available increment, and to submitting the revised regulations to EPA for approval into the Vermont SIP no later than one year after the effective date of EPA's final action on the I-SIPs.

Therefore, we are proposing to conditionally approve this part of sub-element 2 of section 110(a)(2)(C) relating to requirements for state NSR regulations outlined within our 2010 NSR regulation.

With respect to Elements (C) and (J), EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting

program correctly addressing all regulated NSR pollutants. Vermont has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

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

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment

preserves, without the need for additional rulemaking by EPA, the application of the Best Available Control Technology (BACT) requirement to GHG emissions from Step 1 or "anyway" sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification."

On August 19, 2015, EPA amended its PSD and title V regulations to remove from the Code of Federal Regulations portions of those regulations that the D.C. Circuit specifically identified as vacated. EPA intends to further revise the PSD and title V regulations to fully implement the Supreme Court and D.C. Circuit rulings in a separate rulemaking. This future rulemaking will include revisions to additional definitions in the PSD regulations.

Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the additional planned revisions to EPA's PSD regulations. EPA is not expecting states to have

revised their PSD programs in anticipation of EPA's additional actions to revise its PSD program rules in response to the court decisions for purposes of infrastructure SIP submissions. Instead, EPA is only evaluating such submissions to assure that the state's program addresses GHGs consistent with both the court decision, and the revisions to PSD regulations that EPA has completed at this time.

On October 5, 2012, EPA approved revisions to the Vermont SIP that modified Vermont's PSD program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Vermont's PSD permitting requirements for their GHG emissions (77 FR 49404). Therefore, EPA has determined that Vermont's SIP is sufficient to satisfy Elements (C), (D)(i)(II), and (J) with respect to GHGs. The Supreme Court decision and subsequent D.C. Circuit judgment do not prevent EPA's approval of Vermont's infrastructure SIP as to the requirements of Elements (C), (as well as sub-elements (D)(i)(II), and (J)(iii)).

For the purposes of the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS infrastructure SIPs, EPA reiterates that NSR Reform is not in the scope of these actions.

In summary, we are proposing to conditionally approve Vermont's submittals for this sub-element with respect to the

1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-element 3: Preconstruction permitting for minor sources and minor modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulate emissions of the relevant NAAQS pollutants. EPA approved revisions to Vermont's minor NSR program on August 1, 2016 (81 FR 50342). Vermont and EPA rely on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs, VT APCR § 5-502, do not interfere with attainment and maintenance of the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

We are proposing to find that Vermont has met the requirement to have a SIP-approved minor new source review permit program as required under Section 110(a)(2)(C) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

D. Section 110(a)(2)(D) – Interstate transport.

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution with which states must comply. It covers the following five topics, categorized as sub-elements: Sub-element 1, Contribute to nonattainment, and interference with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the four prongs discussed below, two of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

<u>Sub-element 1: Section 110(a)(2)(D)(i)(I) - Contribute to nonattainment (prong 1) and interfere with maintenance of the NAAQS (prong 2)</u>

Section 110(a)(2)(D)(i)(I) addresses any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in another state. The

EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance). Vermont's February 18, 2009 infrastructure SIP submission for the 1997 $PM_{2.5}$ and 1997 ozone NAAQS that is the subject of today's proposed rulemaking did not address prong 1 and 2 (also called "transport elements"). Vermont did, however, make a subsequent submittal for this sub-element on April 15, 2009. EPA proposed approval of this submittal on December 15, 2016 (81 FR 90758). Therefore, we are not taking action on these elements for these two NAAQS in this notice.

Vermont's May 21, 2010 infrastructure SIP submission for the 2006 $PM_{2.5}$ NAAQS addressed section 110(a)(2)(D)(i)(I). EPA proposed approval of this submittal as meeting the transport elements for the 2006 $PM_{2.5}$ NAAQS on December 15, 2016 (81 FR 90758).

With respect to the 2008 Pb NAAQS, the 2011 Memo notes that the physical properties of Pb prevent it from experiencing the same travel or formation phenomena as $PM_{2.5}$ or ozone. Specifically, there is a sharp decrease in Pb concentrations as the distance from a Pb source increases. Accordingly, although it may be possible for a source in a state to emit Pb at a location and in such quantities that contribute significantly to nonattainment in, or interference with maintenance by, any other

state, EPA anticipates that this would be a rare situation, *e.g.*, sources emitting large quantities of Pb in close proximity to state boundaries. The 2011 Memo suggests that the applicable interstate transport requirements of section 110(a)(2)(D)(i)(I) with respect to Pb can be met through a state's assessment as to whether or not emissions from Pb sources located in close proximity to its borders have emissions that impact a neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state.

Vermont's infrastructure SIP submission for the 2008 Pb NAAQS states that Vermont has no lead sources that exceed the 0.5 ton/year monitoring threshold to identify lead emission sources which should be monitored. No single source of Pb, or group of sources, anywhere within the state emits enough Pb to cause ambient concentrations to approach the Pb NAAQS. Our review of the Pb emissions data from Vermont sources, which the state has entered into the EPA National Emissions Inventory (NEI) database, confirms this, and therefore, EPA agrees with Vermont and proposes that Vermont has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

Vermont's November 2, 2015 infrastructure SIP submission for the 2008 ozone NAAQS includes a demonstration that no source or sources within Vermont contribute significantly to non-

attainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS. EPA approved this infrastructure requirement for the 2008 ozone NAAQS on October 13, 2016 (81 FR 70631).

Vermont's infrastructure SIP submission for the 2010 NO_2 NAAQS addressed section 110(a)(2)(D)(i)(I). The submission notes that on January 20, 2012, EPA designated all areas of the country as "unclassifiable/attainment" for the 2010 NO_2 NAAQS because design values for the 2008-2010 period at all monitored sites met the NAAQS. Measurements from 2013-2015 indicate continued attainment of the 2010 NO_2 NAAQS in Vermont and throughout the country. The Vermont submittal notes that Vermont NOx emissions are among the lowest of any state and have been declining for several decades, with total statewide NOx emissions dropping from 37,744 tons in 2002 to 19,352 tons in 2011. Our review of NOx emissions data from Vermont sources, which Vermont has entered into the EPA National Emissions Inventory (NEI) database, confirms this and, therefore, EPA agrees with Vermont and proposes that Vermont has met requirements related to section 110(a)(2)(D)(i)(I) for the 2010 NO_2 NAAQS.

Vermont's infrastructure SIP submission for the 2010 SO_2 NAAQS includes a demonstration that no source or sources within Vermont contribute significantly to non-attainment in, or

interfere with maintenance by, any other state with respect to the 2010 SO_2 NAAQS. EPA will act on this infrastructure requirement for the 2010 SO_2 NAAQS in a separate action.

EPA is proposing to find that Vermont has met requirements for sub-element 1 of section 110(a)(2)(D)(i)(I) for the 2008 Pb and 2010 NO_2 NAAQS. EPA previously approved Vermont's submittals addressing this sub-element for the 2008 ozone NAAQS (81 FR 70631) and previously proposed approval of Vermont's submittal for this element for the 1997 $PM_{2.5}$, 1997 ozone, and 2006 $PM_{2.5}$ NAAQS, and will address Vermont's submittal for the 2010 SO_2 NAAQS in a subsequent notice.

Sub-element 2: Section 110(a)(2)(D)(i)(II) – PSD (prong 3)

One aspect of section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to be in any other state's SIP under Part C of the Act to prevent significant deterioration of air quality. One way for a state to meet this requirement, specifically with respect to those in-state sources and pollutants that are subject to PSD permitting, is through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. For in-state sources not subject to PSD, this requirement can be satisfied

through a fully-approved nonattainment new source review (NNSR) program with respect to any previous NAAQS. EPA's latest approval of some revisions to Vermont's NNSR regulations was on August 1, 2016 (81 FR 50342).

To meet requirements of Prong 3, Vermont cites 10 V.S.A § 556, and VT APCR § 5-501, Review of Construction or Modification of Air Contaminant Sources, and VT APCR § 5-502, Major Stationary Sources and Major Modifications, which set forth requirements for permits to construct, modify or operate major air contaminant sources. Specifically, § 5-501 and § 5-502 provide for nonattainment and PSD permitting for major sources. As noted above in our discussion of Element C, Vermont's PSD program does not fully satisfy the requirements of EPA's PSD implementation rules. However, in a letter dated November 21, 2016, VT DEC committed to submit the required provisions for EPA approval into the Vermont SIP by no later than one year after the effective date of EPA's final action on the pending I-SIPs. Therefore, we are proposing to conditionally approve this sub-element for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS related to section 110(a)(2)(D)(i)(II) for the reasons discussed under Element C.

<u>Sub-element 3: Section 110(a)(2)(D)(i)(II) - Visibility protection (prong 4)</u>

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo, the 2011 Memo, and 2013 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. A fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility. Vermont's Regional Haze SIP was approved by EPA on May 22, 2012 (77 FR 30212). Accordingly, EPA proposes that Vermont has met the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-element 4: Section 110(a)(2)(D)(ii) - Interstate pollution abatement.

One aspect of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 relating to interstate pollution abatement.

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element. On August 1, 2016 (81 FR 50342), EPA approved revisions to VT APCR § 5-501, which includes a provision that satisfies the requirement for Vermont's EPA-approved PSD program to provide notice to neighboring states of a determination to issue a draft PSD permit. *See* VT APCR § 5-501(7)(c). Therefore, we propose to approve Vermont's compliance with the infrastructure SIP requirements of section 126(a) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Vermont has no obligations under any other provision of section 126.

Sub-element 5: Section 110(a)(2)(D)(ii) - International pollution abatement.

One portion of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. Vermont does not have any pending

obligations under section 115 for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, or 2010 SO_2 NAAQS. Therefore, EPA is proposing that Vermont has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

E. Section 110(a)(2)(E) – Adequate resources.

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP and related issues. Additionally, Section 110(a)(2)(E)(ii) requires each state to comply with the requirements with respect to state boards under section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring adequate implementation of SIP obligations with respect to relevant NAAQS. This sub-element, however, is inapplicable to this action, because Vermont does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-element 1: Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues.

Vermont, through its infrastructure SIP submittals, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. Vermont cites 10 V.S.A. § 553, which designates ANR as the air pollution control agency of the state, and 10 V.S.A § 554, which provides the Secretary of ANR with the power to "[a]dopt, amend and repeal rules, implementing the provisions" of 10 V.S.A. Chapter 23, Air Pollution Control, and to "[a]ppoint and employ personnel and consultants as may be necessary for the administration of" 10 V.S.A. Chapter 23. Section 554 also authorizes the Secretary of ANR to "[a]ccept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purposes of carrying out any of the functions of" 10 V.S.A. Chapter 23. Additionally, 3 V.S.A. § 2822 provides the Secretary of ANR with the authority to assess air permit and registration fees, which fund state air programs. In addition to Federal funding and permit and registration fees, Vermont notes that the Vermont Air Quality

and Climate Division (AQCD) receives state funding to implement its air programs.[9]

EPA proposes that Vermont has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-element 2: State board requirements under section 128 of the CAA.

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (1) that 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 and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

In Vermont, no board or body approves permits or enforcement orders; these are approved by the Secretary of

9 VT ANR's authority to carry out the provisions of the SIP identified in 40 CFR 51.230 is discussed in the sections of this document assessing elements A, C, F, and G, as applicable.

Vermont ANR. Thus, with respect to this sub-element, Vermont is subject only to the requirements of paragraph (a)(2) of section 128 of the CAA (regarding conflicts of interest). Accordingly, Vermont indicated in its November 2, 2015 infrastructure SIP submittals for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS that it was submitting the Vermont Executive Code of Ethics, Executive Order 09-11, for incorporation into the SIP.[10] However, Exhibits A and B of Executive Order 09-11 were inadvertently omitted from the November 2, 2015 I-SIP submittal. To address this omission, VT DEC submitted these exhibits in a November 21, 2016 letter that provided additional information and clarification in support of its November 2015 I-SIP submittal.

The Vermont Executive Code of Ethics prohibits all Vermont Executive Branch appointees (including the ANR Secretary) from taking "any action in any particular matter in which he or she has either a conflict of interest or the appearance of a conflict of interest, until such time as the conflict is resolved." Among other things, the code requires an appointee to "take all reasonable steps to avoid any action or circumstances, whether or not specifically prohibited by this code, which might result in (1) [u]ndermining his or her independence or impartiality or action; (2) [t]aking official action on the

10 Vermont also referenced incorporation of the Vermont Executive Code of Ethics into the SIP in its July 29, 2014 infrastructure SIP submittal for the 2008 Pb NAAQS.

basis of unfair considerations; (3) [g]iving preferential treatment to any private interest on the basis of unfair considerations; (4) [g]iving preferential treatment to any family member or member of the appointee's household; (5) [u]sing public office for the advancement of personal interest; (6) [u]sing public office to secure special privileges or exemptions; or (7) [a]ffecting adversely the confidence of the public in the integrity of state government." The code further requires that every appointee earning $30,000 or more per year, which includes the ANR Secretary, annually file with the Vermont Secretary of Civil and Military Affairs an "Ethics Questionnaire" identifying "significant personal interests" that "might conflict with the best interests of the state." EPA is proposing to approve the Vermont Executive Code of Ethics, Vermont Executive Order 09-11, into the Vermont SIP. We are also proposing to remove § 52.2382(a)(5) from the Vermont SIP, which previously took no action on conflict-of-interest requirements.

EPA proposes that, with the inclusion of Executive Order 09-11 into the Vermont SIP, Vermont has met the applicable infrastructure SIP requirements for this sub-element for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

F. Section 110(a)(2)(F) – Stationary source monitoring system.

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Vermont's infrastructure submittals reference existing state regulations previously approved by EPA that require sources to monitor emissions and submit reports. In particular, VT APCR § 5-405, Required Air Monitoring, (45 FR 10775, Feb. 19, 1980), provides that ANR "may require the owner or operator of any air contaminant source to install, use and maintain such monitoring equipment and records, establish and maintain such records, and make such periodic emission reports as [ANR] shall prescribe." Moreover, section 5-402, Written Reports When Requested (81 FR 50342; Aug. 1, 2016), authorizes ANR to

"require written reports from the person operating or responsible for any proposed or existing air contaminant source, which reports shall contain," among other things, information concerning the "nature and amount and time periods or durations of emissions and such other information as may be relevant to the air pollution potential of the source. These reports shall also include the results of such source testing as may be required under Section 5-404 herein." Section 5-404, Methods for Sampling and Testing of Sources (45 FR 10775 Feb. 19, 1980) in turn authorizes ANR to "require the owner or operator of [a] source to conduct tests to determine the quantity of particulate and/or gaseous matter being emitted" and requires a source to allow access, should ANR have reason to believe that emission limits are being violated by the source, and allows ANR "to conduct tests of [its] own to determine compliance." In addition, operators of sources that emit more than five tons of any and all air contaminants per year are required to register the source with the Secretary of ANR and to submit emissions data annually, pursuant to § 5-802, Requirement for Registration, and § 5-803, Registration Procedure (60 FR 2524 Jan. 10, 1995). Vermont also certifies that nothing in its SIP would preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if

the appropriate performance or compliance test or procedure had been performed. *See* 40 CFR 51.212(c).

Vermont's infrastructure SIP submittals for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS provide for correlation by VT DEC of emissions reports by sources with applicable emission limitations or standards, as required by CAA § 110(a)(2)(F)(iii). As explained in a letter from VT DEC dated November 21, 2016, and included in the docket for this action, Vermont receives emissions data through its annual registration program. Currently VT DEC analyzes a portion of these data manually to correlate a facility's actual emissions with permit conditions, NAAQS, and, if applicable, hazardous air contaminant action levels. VT DEC is in the process of setting up an integrated electronic database that will merge all air contaminant source information across permitting, compliance and registration programs, so that information concerning permit conditions, annual emissions data, and compliance data will be accessible in one location for a particular air contaminant source. VT DEC stated in its November 2016 letter that the database will be capable of correlating certain emissions data with permit conditions and other applicable standards electronically where feasible to allow VT DEC to complete this correlation more efficiently and accurately.

Regarding the section 110(a)(2)(F) requirement that the SIP provide for the public availability of emission reports, Vermont certified in its November 2, 2015 submittals for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS that the Vermont Public Records Act, 1 V.S.A. §§ 315-320, provides for the free and open examination of public records, including emissions reports. Vermont further noted that it was "pursuing amendments to 10 V.S.A. § 563" that "will require [ANR] to make public all emissions and emissions monitoring data submitted to the Agency by owners and operators of air contaminant sources" and that it expected these amendments to become law in 2016. When EPA approved Vermont's original SIP in 1972, the Agency found that Vermont did not "have the authority to make emissions data available to the public since 10 V.S.A. section 363[11] would require the data to be held confidential if a source certified that it related to production or sales figures, unique processes, or would tend to affect adversely the competitive position of the owner." *See* 40 CFR 52.2373(a). Accordingly, EPA found that Vermont's plan did not provide for public availability of emission data as required by 40 CFR 51.116(c). *See* 40 CFR 52.2374. Newly revised § 563, however, which became effective July 1, 2016, now provides that the ANR "Secretary shall not withhold emissions data and

11 Vermont also referenced incorporation of the Vermont Executive Code of Ethics into the SIP in its July 29, 2014 infrastructure SIP submittal for the 2008 Pb NAAQS.

emission monitoring data from public inspection or review" and that the ANR "Secretary shall keep confidential any record or other information furnished to or obtained by the Secretary concerning an air contaminant source, *other than emissions data and emission monitoring data*, that qualifies as a trade secret pursuant to 1 V.S.A. § 317(c)(9)." (emphasis added). By letter dated November 21, 2016, Vermont submitted revised § 563 to EPA for inclusion in the SIP. Consequently, EPA is proposing to approve Vermont's submittals for this requirement of section 110(a)(2)(F) for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2006 ozone, 2008 lead, 2010 NO_2, and 2010 SO_2 NAAQS.

G. Section 110(a)(2)(G) – Emergency powers.

This section requires that a plan provide for state authority analogous to that provided to the EPA Administrator in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an "imminent and substantial endangerment to public health or welfare, or the environment." Section 303 further authorizes the Administrator to issue "such orders as may be necessary to protect public health or welfare or the

environment" in the event that "it is not practicable to assure prompt protection … by commencement of such civil action."

We propose to find that Vermont's submittals and certain state statutes and regulations provide for authority comparable to that in section 303. Vermont's submittals cite 10 V.S.A. § 560, which authorizes the Secretary of ANR to order the immediate discontinuation of air emissions causing imminent danger to human health or safety. In addition, 10 V.S.A. § 554 authorizes the Secretary to enforce orders issued pursuant to § 560 "by all appropriate administrative and judicial proceedings." The submittals also cite 10 V.S.A. § 8009, which authorizes the issuance of an emergency administrative order when a violation presents, or an activity will or is likely to result in, an immediate threat to the public health or an immediate threat of substantial harm to the environment. Newly adopted VT APCR § 5-407, which became effective December 15, 2016, prohibits any person from emitting such quantities of air contaminants that will result in a condition of air pollution. "Air pollution" is defined in § 5-101 as "the presence in the outdoor atmosphere of one or more air contaminants in such quantities, and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life, or property. Such effects may result from direct exposure to air

contaminants, from deposition of air contaminants to other environmental media, or from alterations caused by air contaminants to the physical or chemical properties of the atmosphere." VT DEC interprets 10 V.S.A. § 8009 and VT APCR § 5-407 as allowing the Secretary to issue an emergency administrative order when air pollution is causing an imminent threat to public health, welfare, or the environment. Furthermore, an order issued pursuant to 10 V.S.A. § 8009 is presented to the Environmental Division of Vermont Superior Court and, if no hearing is requested, becomes a judicial order when signed by the Court. *See* 10 V.S.A. § 8008(d). If a hearing is requested, the order is reviewed by the court. *Id.* §§ 8009(d), 8012(b).

We propose to find that this combination of state statutory and regulatory provisions provides the Secretary with authority comparable to that given the Administrator in section 303 of the CAA. Therefore, we are proposing to approve the state's submittals with respect to this requirement of Section 110(a)(2)(G) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Section 110(a)(2)(G) also requires that, for any NAAQS, Vermont have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. *See* 40 CFR 51.152(c). A contingency plan

is not required if the entire state is classified as Priority III for a particular pollutant. *Id.* The entire state of Vermont is classified as Priority III for ozone and NO_2 pursuant to 40 CFR 52.2371.

With regard to SO_2 and PM, however, two air quality control regions ("AQCR") in Vermont — Champlain Valley Interstate and Vermont Intrastate — are classified as Priority II areas. However, EPA's last update to the priority classifications for Vermont occurred in 1980. *See* 45 FR 10782. Vermont indicated in its November 2, 2015, submittal for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS that it wishes to update its SO_2 priority classifications for both AQCRs, and that SO_2 concentrations in Vermont have been below Priority II area levels for more than 35 years. There are currently no SO_2 monitors in the Champlain Valley Interstate and Vermont Intrastate AQCRs. EPA has reviewed the SO_2 monitoring data that the state has certified, and agrees that the SO_2 levels are significantly below the threshold of a Priority I, IA, or II level.

Vermont SO_2 emissions are among the lowest of any state, with 2011 National Emission Inventory (NEI) point-source emissions totaling less than 500 tons from all Vermont point-sources combined. Ambient Vermont SO_2 concentrations at Vermont's highest concentration site have declined by 75 percent in the past 10 years, with a 2012-2014 1-hour design value of 13

parts per billion (ppb).[12] The only 1-hour SO_2 nonattainment area in a state adjacent to Vermont, in central New Hampshire, has recently experienced dramatic reductions in SO_2 emissions and ambient concentrations following the 2012 installation of a scrubber at the Merrimack Station in Bow, NH.

Therefore, we are proposing to revise Vermont's priority classification for the Champlain Valley Interstate and Vermont Intrastate areas from Priority II to Priority III for SO_2. Accordingly, a contingency plan for SO_2 is not required. *See* 40 CFR 51.152(c). As emission levels change, states are encouraged to periodically evaluate the priority classifications and propose changes to the classifications based on the three most recent years of air quality data. *See* 40 CFR 51.153.

We note that $PM_{2.5}$ and Pb are not explicitly included in the contingency plan requirements of 40 CFR subpart H. According to EPA's 2011 NEI, there are no Pb sources within Vermont that exceed EPA's reporting threshold of 0.5 tons per year. The largest source is reported to be 260 pounds per year (0.13 tons per year).

With respect to the 2006 $PM_{2.5}$ NAAQS, EPA's 2009 Memo recommends that states develop emergency episode plans for any area that has monitored and recorded 24-hour $PM_{2.5}$ levels greater

12 The 2010 1-hour SO_2 NAAQS is 75 ppb.

than 140 µg/m^3 since 2006. In its May 21, 2010, submittal, Vermont certified that the highest 24-hour $PM_{2.5}$ concentration recorded in the state in the previous three years was 36.7 µg/m^3. Furthermore, EPA's review of Vermont's certified air quality data in AQS indicates that the highest 24-hour $PM_{2.5}$ level since that time (i.e., data through December 31, 2015) was 43.5 µg/m^3 µg/m^3, which occurred in 2015.

Although not expected, if Pb or $PM_{2.5}$ conditions were to change, Vermont does have general authority, as noted previously (*i.e.*, 10 V.S.A. § 560 and 10 V.S.A. § 8009), to order a source to cease operations if it is determined that emissions from the source pose an imminent danger to human health or safety or an immediate threat of substantial harm to the environment.

In addition, as stated in Vermont's infrastructure SIP submittals under the discussion of public notification (Element J), Vermont posts near real-time air quality data, air quality predictions and a record of historical data on the VT DEC website and distributes air quality alerts by email to a large number of parties, including the media. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions and to reduce the public's exposure. In addition, daily forecasted fine particle levels are also made available on the internet through the EPA AirNow and EnviroFlash systems. Information regarding these two

systems is available on EPA's website at www.airnow.gov. Notices are sent out to EnviroFlash participants when levels are forecast to exceed the current 24-hour $PM_{2.5}$ standard.

EPA proposes that Vermont has met the applicable infrastructure SIP requirements for section 110(a)(2)(G) with respect to contingency plans for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. We also are proposing to update the classifications for two of Vermont's air quality control regions from Priority II to Priority III for SO_2 based on recent air quality monitoring data collected by the state.

H. Section 110(a)(2)(H) – Future SIP revisions.

This section requires that a state's SIP provide for revision from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate. To address this requirement, Vermont's infrastructure submittals reference 10 V.S.A § 554, which provides the Secretary of Vermont ANR with the power to "[p]repare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution in this state" and to "[a]dopt, amend and repeal rules, implementing the provisions" of Vermont's air pollution control laws set forth in

10 V.S.A. chapter 23. Vermont has submitted this statute for inclusion into the SIP. EPA proposes that Vermont has met the infrastructure SIP requirements of CAA section 110(a)(2)(H) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

I. Section 110(a)(2)(I) - Nonattainment area plan or plan revisions under part D.

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas. EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J) – Consultation with government officials; public notifications; prevention of significant deterioration; visibility protection.

The evaluation of the submissions from Vermont with respect to the requirements of CAA section 110(a)(2)(J) are described below.

Sub-element 1: Consultation with government officials.

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

Vermont's 10 V.S.A § 554 specifies that the Secretary of Vermont ANR shall have the power to "[a]dvise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups." Vermont has submitted this statute for inclusion into the SIP. In addition, VT APCR § 5-501(7)(c) requires VT ANR to provide notice to local governments and federal land managers of a determination by ANR to issue a draft PSD permit for a major stationary source or major modification. On August 1, 2016 (81 FR 50342), EPA approved VT APCR § 5-501(7)(c) into Vermont's SIP.

EPA proposes to approve 10 V.S.A § 554 into the SIP and proposes that Vermont has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-element 2: Public notification.

Section 110(a)(2)(J) also requires states to: notify the public if NAAQS are exceeded in an area; advise the public of

health hazards associated with exceedances; and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

Vermont's 10 V.S.A § 554 authorizes the Secretary of Vermont ANR to "[c]ollect and disseminate information and conduct educational and training programs relating to air contamination and air pollution." In addition, the VT DEC Air Quality and Climate Division website includes near real-time air quality data, and a record of historical data. Air quality forecasts are distributed daily via email to interested parties. Air quality alerts are sent by email to a large number of affected parties, including the media. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions and to reduce the public's exposure. Also, Air Quality Data Summaries of the year's air quality monitoring results are issued annually and posted on the VT DEC Air Quality and Climate Division website. Vermont is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs.

EPA proposes that Vermont has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-element 3: PSD.

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Vermont's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and, as we have noted, does not fully satisfy the requirements of EPA's PSD implementation rules.

Consequently, we are proposing to conditionally approve the PSD sub-element of section 110(a)(2)(J) for the, 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, consistent with the actions we are proposing for sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II).

Sub-element 4: Visibility protection.

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 Memo, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection

requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

K. Section 110(a)(2)(K) – Air quality modeling/data.

To satisfy Element K, the state air agency must demonstrate that it has the authority to perform air quality modeling to predict effects on air quality of emissions of any NAAQS pollutant and submission of such data to EPA upon request. Vermont reviews the potential impact of major sources consistent with 40 CFR part 51, appendix W, "Guidelines on Air Quality Models." *See* VT APCR § 5-406(2).

In its submittals, Vermont cites to VT APCR § 5-406, Required Air Modeling, which authorizes "[t]he Air Pollution Control Officer [to] require the owner or operator of any proposed air contaminant source . . . to conduct . . . air quality modeling and to submit an air quality impact evaluation to demonstrate that operation of the proposed source . . . will not directly or indirectly result in a violation of any ambient air quality standard, interfere with the attainment of any ambient air quality standard, or violate any applicable prevention of significant deterioration increment . . . ." Vermont also cites to VT APCR § 5-502, Major Stationary Sources and Major Modifications, which requires the submittal of an air

quality impact evaluation or air quality modeling to ANR to demonstrate impacts of new and modified major sources. The modeling data are sent to EPA along with the draft major permit.

The state also collaborates with the Ozone Transport Commission (OTC) and the Mid-Atlantic Regional Air Management Association and EPA in order to perform large-scale urban air shed modeling for ozone and PM, if necessary. EPA proposes that Vermont has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

L. Section 110(a)(2)(L) – Permitting fees.

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

Vermont implements and operates a Title V permit program. *See* Subchapter X of VT APCR, which was approved by EPA on November 29, 2001 (66 FR 59535). To gain this approval, Vermont demonstrated the ability to collect sufficient fees to run the program. Vermont also notes in its submittals that the costs of all CAA permitting, implementation, and enforcement for new or modified sources are covered by Title V fees, and that Vermont state law provides for the assessment of application fees from air emissions sources for permits for the construction or

modification of air contaminant sources, and sets forth permit fees. *See* 10 V.S.A § 556, and 3 V.S.A § 2822(j).

EPA proposes that Vermont has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. We also are proposing to remove § 52.2382(a)(1) from the CFR, which states that EPA has taken no action to approve or disapprove permitting fees.

M. Section 110(a)(2)(M) – Consultation/participation by affected local entities.

To satisfy Element M, states must consult with, and allow participation from, local political subdivisions affected by the SIP. Vermont's infrastructure submittals reference 10 V.S.A § 554, which in today's action is being proposed for approval into the SIP, and which authorizes the Secretary of Vermont ANR to "[a]dvise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups." EPA proposes that Vermont has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

N. Vermont Statutes for Inclusion into the Vermont SIP

As noted above in the discussion of several elements, Vermont submitted, and EPA is proposing to approve 10 V.S.A. § 554 (Powers), 10 V.S.A. § 563 (Confidential records; penalty), and Vermont Executive Order 09-11 (Executive Code of Ethics) into the SIP.

V. What action is EPA taking?

EPA is proposing to approve most elements of the infrastructure SIPs submitted by Vermont for the 1997 $PM_{2.5}$, 1997 ozone, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, with the exception of three aspects of these SIPs relating to PSD which we are proposing to conditionally approve.

The state submitted these SIPs on the following dates: 1997 $PM_{2.5}$ - February 18, 2009; 1997 ozone – February 18, 2009; 2006 $PM_{2.5}$ – May 21, 2010; 2008 Pb – July 29, 2014; 2008 ozone – November 2, 2015; 2010 NO_2 – November 2, 2015; and 2010 SO_2 – November 2, 2015.

Specifically, EPA's proposed actions regarding each infrastructure SIP requirement are contained in Table 1 below.

Table 1: Proposed action on Vermont's infrastructure SIP submittals

Element	**1997**	**2006**	**2008**	**2008**	**2010**	**2010**

	$PM_{2.5}$ and 1997 Ozone	**$PM_{2.5}$**	**Pb**	**Ozone**	**NO_2**	**SO_2**
(A): Emission limits and other control measures	A	A	A	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A	A	A	A
(C)1: Enforcement of SIP measures	A	A	A	A	A	A
(C)2: PSD program for major sources and major modifications	A*	A*	A*	A*	A*	A*
(C)3: PSD program for minor sources and minor modifications	A	A	A	A	A	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	NI	A	A	NT	A	NT
(D)2: PSD	A*	A*	A*	A*	A*	A*
(D)3: Visibility Protection	A	A	A	A	A	A
(D)4: Interstate Pollution Abatement	A	A	A	A	A	A
(D)5: International Pollution Abatement	A	A	A	A	A	A
(E)1: Adequate resources	A	A	A	A	A	A
(E)2: State boards	A	A	A	A	A	A
(E)3: Necessary assurances with respect to local agencies	NA	NA	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A	A	A
(G): Emergency power	A	A	A	A	A	A
(H): Future SIP revisions	A	A	A	A	A	A
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+	+	+
(J)1: Consultation with government officials	A	A	A	A	A	A
(J)2: Public notification	A	A	A	A	A	A
(J)3: PSD	A*	A*	A*	A*	A*	A*
(J)4: Visibility protection	+	+	+	+	+	+
(K): Air quality modeling and data	A	A	A	A	A	A
(L): Permitting fees	A	A	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A	A	A

In the above table, the key is as follows:

A	Approve
A*	Conditionally approve
+	Not germane to infrastructure SIPs
NI	Not included in the submittals which are the subject of today's action.
NA	Not applicable
NT	Not taking action at this time.

In addition, EPA is proposing to approve, and incorporate into the Vermont SIP, the following Vermont statutes which were included for approval in Vermont's infrastructure SIP submittals: 10 V.S.A. §§ 554 and 563, and Vermont Executive Order 09-11, Executive Code of Ethics. EPA is further proposing to remove the following provisions from Title 40 of the CFR: sections 52.2373, 52.2374, and 52.2382(a)(1), (2), (4), and (5), for the reasons discussed below.

As noted in the discussion of section 110(a)(2)(F) above, in 1972, EPA found Vermont's SIP inadequate with respect to the requirement to make emission data available to the public as required by the Act. *See* 40 CFR 52.2373, and 52.2374(a); 37 FR 10842 (May 31, 1972). Consequently, EPA promulgated regulations setting forth procedures for the release of emission data. *See* 52.2374(b); 37 FR 11826 (June 14, 1972). EPA is proposing in today's notice, however, to approve Vermont's infrastructure SIP submittals with respect to this section 110(a)(2)(F) requirement

as discussed above. Consequently, EPA proposes to remove sections 52.2373 and 52.2374 from Title 40 of the CFR.

In 1980, EPA, acting on SIP revisions submitted by Vermont relating mainly to Part D of the Act (Plan Requirements for Nonattainment Areas), determined that, for various reasons, it would not act on a handful of what it termed "Non-Part D Measures" submitted by the State but required by other parts of the Act. *See* 40 CFR 52.2382(a); 45 FR 10775 (Feb. 19, 1980). More specifically, EPA took no action on revisions related to certain requirements of section 121 (relating to intergovernmental consultation), section 126 (relating to interstate pollution notification), and section 128 (relating to conflict of interest). *See* 40 CFR 52.2382(a); 45 FR 10775 (Feb. 19, 1980). As discussed earlier, these three sections of the Act are made applicable to infrastructure SIPs pursuant to sections 110(a)(2)(J), (D)(ii), and (E)(ii), respectively. In addition, EPA took no action on the requirements of erstwhile section 110(a)(2)(K) (relating to permit fees), which was later recodified at 110(a)(2)(L). Since, in today's action we are proposing to approve or conditionally approve Vermont's infrastructure SIP submittals with respect to the relevant requirements in 110(a)(2)(D)(ii), (E)(ii), (J), and (L), we propose to remove 52.2382(a)(1), (2), (4), and (5) from Title 40 of the CFR as legally obsolete.

As noted in Table 1, we are proposing to conditionally approve portions of Vermont's infrastructure SIP submittals pertaining to PSD-related elements (C)(2), (D)(2), and (J)(3).

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to submit an update to its PSD program that fully remedies the deficiencies mentioned above under element C. If the State fails to do so, this action will become a disapproval 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 Vermont SIP. EPA subsequently will publish a document in the Federal Register notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved infrastructure SIP elements for all affected pollutants will be disapproved. In addition, a final disapproval triggers the Federal

Implementation Plan requirement under section 110(c). If EPA approves the new submittal, the PSD program and relevant infrastructure SIP elements will be fully approved and replace the conditionally approved program in the SIP.

Additionally, we are proposing to update the 40 CFR 52.2371 classifications for two of Vermont’s air quality control regions for sulfur dioxide based on recent air quality monitoring data collected by the state, which removes state's infrastructure SIP contingency plan obligation for sulfur dioxide.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. 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 New England Regional Office listed in the **ADDRESSES** section of this Federal Register, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **ADDRESSES** section of this Federal Register.

VI. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference two Vermont statutes and one Vermont

Executive Order, all referenced in Section V above. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VII. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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 proposed 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 proposed action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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, the SIP 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: March 16, 2017.

Deborah A. Szaro,
Acting Regional Administrator,
EPA New England.

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