

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R01-OAR-2017-0443; FRL-9988-28-Region 1]**

**Air Plan Approval; Rhode Island; Infrastructure State Implementation Plan  
Requirements for the 2012 PM<sub>2.5</sub> NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve most elements of a State Implementation Plan (SIP) submission from Rhode Island that addresses the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 fine particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS). We are also proposing to conditionally approve certain elements of this submittal that relate to requirements for the state's Prevention of Significant Deterioration (PSD) program. In addition, EPA is proposing to disapprove the submission with respect to future SIP revisions. However, a federal implementation plan has been in place for this requirement since 1973. 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 with respect to this NAAQS under the CAA.

**DATES:** Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2017-0443 at <https://www.regulations.gov>, or via email to [simcox.alison@epa.gov](mailto:simcox.alison@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 at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Alison C. Simcox, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912, tel. (617) 918-1684; [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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## **I. Background and Purpose.**

### **A. What Rhode Island SIP submission does this rulemaking address?**

This rulemaking addresses a December 6, 2017, submission from the Rhode Island Department of Environmental Management (RI DEM) regarding the infrastructure SIP requirements of the CAA for the 2012 fine particle ( $PM_{2.5}$ <sup>1</sup>) National Ambient Air Quality Standard (NAAQS). The primary, health-based annual standard is set at 12.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) and the 24-hour standard is set at 35  $\mu\text{g}/\text{m}^3$ . *See* 78 FR 3086. Under sections 110(a)(1) and (2) of the CAA, states are required to provide infrastructure SIP submissions to ensure that state SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2012  $PM_{2.5}$  NAAQS.

### **B. What is the scope of this rulemaking?**

EPA is acting on a SIP submission from RI DEP that addresses the infrastructure requirements of the Act for the 2012  $PM_{2.5}$  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

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<sup>1</sup>  $PM_{2.5}$  refers to particulate matter of 2.5 microns or less in diameter, often referred to as “fine” particles.

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 Prevention of Significant Deterioration (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 rulemaking 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.

## II. What guidance is EPA using to evaluate this SIP submission?

EPA highlighted the statutory requirement to submit infrastructure SIPs within 3 years of promulgation of a new NAAQS in an October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” (2007 memorandum). EPA has issued additional guidance documents and memoranda, including a September 25, 2009, memorandum entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)” (2009 memorandum), and a September 13, 2013, memorandum entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” (2013 memorandum).<sup>2</sup>

With respect to the “Good Neighbor” or interstate transport requirements for infrastructure SIPs, the most recent relevant EPA guidance is a memorandum published on March 17, 2016, entitled “Information on the Interstate Transport “Good Neighbor” Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)” (2016 memorandum). The 2016 memorandum describes EPA’s past approach to addressing interstate transport, and provides EPA’s general review of relevant modeling data and air quality projections as they relate to the 2012 annual PM<sub>2.5</sub> NAAQS. The 2016 memorandum provides information relevant to EPA Regional office review of the CAA section 110(a)(2)(D)(i)(I) “Good Neighbor” provision requirements in infrastructure SIPs with respect to the 2012 annual PM<sub>2.5</sub> NAAQS. This rulemaking considers information provided in that memorandum.

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<sup>2</sup> These memoranda and other referenced guidance documents and memoranda are included in the docket for today’s action.

### **III. EPA's review.**

EPA is soliciting comment on our evaluation of Rhode Island's infrastructure SIP submission in this notice of proposed rulemaking. In Rhode Island's submission, a detailed list of Rhode Island Laws and previously SIP-approved Air Quality Regulations show how the various components of its EPA-approved SIP meet each of the requirements of section 110(a)(2) of the CAA for the 2012 PM<sub>2.5</sub> NAAQS. 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.<sup>3</sup> 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.

The Rhode Island submittal cites Rhode Island General Laws (RIGL) and RI Air Pollution Control Regulations (APCR) that the state has adopted to control the emissions of criteria pollutants, including PM<sub>2.5</sub>, and PM<sub>2.5</sub> precursors sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>).

RIGL § 23-23-5(12), "Powers and duties of the director," authorizes the RI DEM Director "to make, issue, and amend rules and regulations...for the prevention, control, abatement, and limitation of air pollution..." In addition, this section authorizes the Director to "prohibit

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<sup>3</sup> See, for example, EPA's final rule on "National Ambient Air Quality Standards for Lead." 73 FR 66964, 67034 (November 12, 2008).

emissions, discharges and/or releases and...require specific control technology.” The Rhode Island submittal cites more than a dozen specific rules that the state has adopted to control the emissions of PM<sub>2.5</sub> and the PM<sub>2.5</sub> precursors SO<sub>2</sub> and NO<sub>x</sub>. A few, with their EPA approval citation are listed here: No. 3 – Particulate Emissions from Industrial Processes (81 FR 47708; July 22, 2016); No. 5 – Fugitive Dust (46 FR 25446; May 7, 1981); No. 8 – Sulfur Content of Fuels (83 FR 39888; August 13, 2018); No. 9 – Air Pollution Control Permits (78 FR 63383; October 24, 2013); No. 12 - Incinerators (07/22/2016; 81 FR 47708); No. 27 – Control of Nitrogen Oxide Emissions (83 FR 39888; August 13, 2018); and No. 45 – Rhode Island Diesel Engine Anti-Idling Program (73 FR 16203; March 27, 2008). *See* 40 CFR 52.2070.

EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2012 PM<sub>2.5</sub> NAAQS. As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM emissions 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 provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze ambient air quality data, and make such 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.

RI DEM operates an air-quality monitoring network, and EPA approved the state's most recent Annual Air Monitoring Network Plan for PM<sub>2.5</sub> on October 25, 2018.<sup>4</sup> Furthermore, RI DEM 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 RI DEM meets the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 PM<sub>2.5</sub> 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 new source review (NSR) requirements under prevention of significant deterioration (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.

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.

*Sub-Element 1: Enforcement of SIP Measures*

The Rhode Island General Laws provide the Director of RI DEM with the legal authority to enforce air pollution control requirements. Such enforcement authority is provided by RIGL § 23-23-5, which grants the Director of RI DEM general enforcement power, inspection and investigative authority, and the power to issue administrative orders, among other things. In

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<sup>4</sup> See EPA approval letter located in the docket for this action.

addition, APCR No. 9, “Air Pollution Control Permits,” sets forth requirements for new and modified major and minor stationary sources. Section 9.3 of the regulation contains specific requirements for new and modified minor sources. Section 9.4 of the regulation contains specific new source review requirements applicable to major stationary source or major modifications located in nonattainment areas. Section 9.5 contains specific new source review requirements applicable to major stationary sources or major modifications located in attainment or unclassifiable areas (PSD).

EPA proposes that Rhode Island has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

*Sub-Element 2: PSD Program for Major Sources and Major Modifications.*

PSD applies to new major sources or major modifications for pollutants where the area in which the source is located is in attainment of, or is unclassifiable with regard to, the relevant NAAQS. RI DEM’s EPA-approved PSD rules, contained at APCR No. 9, contain provisions that address most applicable infrastructure SIP requirements related to all regulated NSR pollutants.

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<sub>x</sub> as a precursor to ozone. *See* 70 FR 71679. This requirement is 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<sub>x</sub> 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.

Rhode Island has already incorporated several of the changes required by the Phase 2 Rule but has not made the necessary change to the definition of “major stationary source” identifying NO<sub>x</sub> as a precursor to ozone. The December 2017 infrastructure submittal states that Rhode Island is amending APCR No. 9 to comply with 40 CFR 51.166 regarding identifying NO<sub>x</sub> as a precursor to ozone, and on March 26, 2018, Rhode Island submitted a SIP revision to address this deficiency. EPA is currently reviewing this submittal to verify that it satisfies this requirement. Therefore, we are proposing to conditionally approve section 110(a)(2)(C) with respect to this requirement of the Phase 2 Rule for the 2012 PM<sub>2.5</sub> 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<sub>2.5</sub>)” (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM<sub>2.5</sub> and other pollutants that contribute to secondary PM<sub>2.5</sub> formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM<sub>2.5</sub>, otherwise known as precursors. In the 2008 rule, EPA identified precursors to PM<sub>2.5</sub> for the PSD program to be SO<sub>2</sub> and NO<sub>x</sub> (unless the state demonstrates to the Administrator’s satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area’s ambient PM<sub>2.5</sub> concentrations). The 2008 NSR Rule also specifies that Volatile Organic Compounds (VOCs) are not considered to be precursors to PM<sub>2.5</sub> 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<sub>2.5</sub> concentrations.

The explicit references to SO<sub>2</sub>, NO<sub>x</sub>, and VOCs as they pertain to secondary PM<sub>2.5</sub> 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<sub>2.5</sub>, 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<sub>2.5</sub> to mean the following emissions rates: 10 tons per year (tpy) of direct PM<sub>2.5</sub>; 40 tpy of SO<sub>2</sub>; and 40 tpy of NO<sub>x</sub> (unless the state demonstrates to the Administrator’s satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area’s ambient PM<sub>2.5</sub> 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.<sup>5</sup>

On January 18, 2011, Rhode Island submitted revisions to its PSD program incorporating the necessary changes obligated by the 2008 NSR Rule, with respect to provisions that explicitly identify precursors to PM<sub>2.5</sub>. EPA approved Rhode Island’s 2011 SIP revision on April 21, 2015 (80 FR 22106).

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<sup>5</sup> 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<sub>10</sub> 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<sub>2.5</sub> 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 action on Rhode Island’s infrastructure SIP in regard 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.

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<sub>2.5</sub> and PM<sub>10</sub> emission limits in NSR permits. Instead, EPA determined that states had to account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables for applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> 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).

Rhode Island's SIP-approved PSD program does not contain the exact language in 40 CFR 51.166(b)(49)(i)(a). However, EPA has previously determined that Rhode Island's SIP-approved regulations define PM<sub>2.5</sub> and PM<sub>10</sub> such that the state's PSD program adequately accounts for the condensable fraction of PM<sub>2.5</sub> and PM<sub>10</sub>. *See* 78 FR 63383 at 63386 (October 24, 2013). Therefore, we are proposing that Rhode Island meets the requirements of section 110(a)(2)(C) for the 2012 PM<sub>2.5</sub> NAAQS regarding the requirements of 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<sub>2.5</sub>) – 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<sub>2.5</sub>, including a system of "increments," which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c).

The 2010 NSR Rule also established a new "major source baseline date" for PM<sub>2.5</sub> as October 20, 2010, and a new trigger date for PM<sub>2.5</sub> 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 ( $\mu\text{g}/\text{m}^3$ ), annual average, for  $\text{PM}_{2.5}$ . This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i). The December 2017 infrastructure submittal states that Rhode Island is amending APCR No. 9 to comply with the 2010 NSR Rule, and Rhode Island subsequently submitted the March 26, 2018 SIP revision to address these additional elements of  $\text{PM}_{2.5}$  implementation in PSD permitting. EPA is currently reviewing the March 2018 submittal to verify that it satisfies the requirements of the 2010 NSR Rule. 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 for the 2012  $\text{PM}_{2.5}$  NAAQS.

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. Rhode Island has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs, with the exception of the deficiencies described elsewhere in this document.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Evtl. Prot. 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 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.

At present, EPA has determined that Rhode Island's SIP is sufficient to satisfy Elements (C), (D)(i)(II), and (J) with respect to GHGs. This is because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits issued to "anyway sources" contain limitations on GHG emissions based on the application of BACT. Rhode Island has, however, removed step 2 from its PSD permitting program and has submitted these changes to EPA in its March 26, 2018 SIP submittal, which EPA is reviewing to verify that it is consistent with the D.C. Circuit's vacated provisions at 40 CFR 51.166(b)(48)(v). Nevertheless, the presence of these provisions in the previously-approved plan does not render the infrastructure SIP submission inadequate to satisfy Elements (C), (D)(i)(II), and (J). The SIP contains the PSD requirements for applying the BACT requirement to GHG emissions from "anyway sources" that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent EPA's approval of Rhode Island'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 2012 PM<sub>2.5</sub> NAAQS infrastructure SIPs, EPA reiterates that NSR Reform is not in the scope of these actions.

In summary, we are proposing to approve the majority of Rhode Island's submittal for this sub-element with respect to the 2012 PM<sub>2.5</sub> NAAQS, but to conditionally approve the submittal regarding the identification of NO<sub>x</sub> as a precursor to ozone in the definition of major stationary source and regarding the revisions required by the 2010 NSR Rule, as described above.

*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 regulates emissions of the relevant NAAQS pollutants. EPA last approved Rhode Island's minor NSR program, on May 7, 1981 (46 FR 25446) as well as updates to that program. Since this date, Rhode Island and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2012 PM<sub>2.5</sub> NAAQS.

We are proposing to find that Rhode Island meets the requirement to have a SIP-approved minor new source review permit program as required under Section 110(a)(2)(C) for the 2012 PM<sub>2.5</sub> 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, Significant contribution 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.

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

Section 110(a)(2)(D)(i)(I) of the CAA requires a SIP to prohibit any emissions activity in the state that will contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any downwind state. EPA commonly refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the “Good Neighbor” or “transport” provisions of the CAA. This rulemaking proposes action on the portion of Rhode Island’s December 6, 2017 SIP submission that addresses the prong 1 and 2 requirements with respect to the 2012 PM<sub>2.5</sub> NAAQS.

EPA has developed a consistent framework for addressing the prong 1 and 2 interstate-transport requirements with respect to the PM<sub>2.5</sub> NAAQS in several previous federal rulemakings. The four basic steps of that framework include: (1) identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) identifying which upwind states contribute to these identified problems in amounts sufficient to warrant further review and analysis; (3) for states identified as contributing to downwind air quality problems, identifying upwind emissions reductions necessary to prevent an upwind state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS downwind; and (4) for states that are found to have emissions that significantly contribute to

nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures. This framework was most recently applied with respect to PM<sub>2.5</sub> in the Cross-State Air Pollution Rule (CSAPR), which addressed both the 1997 and 2006 PM<sub>2.5</sub> standards, as well as the 1997 ozone standard. *See* 76 FR 48208 (August 8, 2011).

EPA's analysis for CSAPR, conducted consistent with the four-step framework, included air-quality modeling that evaluated the impacts of 38 eastern states on identified receptors in the eastern United States. EPA indicated that, for step 2 of the framework, states with impacts on downwind receptors that are below the contribution threshold of 1% of the relevant NAAQS would not be considered to significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS, and would, therefore, not be included in CSAPR. *See* 76 FR 48220. EPA further indicated that such states could rely on EPA's analysis for CSAPR as technical support in order to demonstrate that their existing or future interstate transport SIP submittals are adequate to address the transport requirements of 110(a)(2)(D)(i)(I) with regard to the relevant NAAQS. *Id.*

In addition, as noted above, on March 17, 2016, EPA released the 2016 memorandum to provide information to states as they develop SIPs addressing the Good Neighbor provision as it pertains to the 2012 PM<sub>2.5</sub> NAAQS. Consistent with step 1 of the framework, the 2016 memorandum provides projected future-year annual PM<sub>2.5</sub> design values for monitors throughout the country based on quality-assured and certified ambient-monitoring data and recent air-quality modeling and explains the methodology used to develop these projected design values. The memorandum also describes how the projected values can be used to help determine which monitors should be further evaluated to potentially address if emissions from other states

significantly contribute to nonattainment or interfere with maintenance of the 2012 PM<sub>2.5</sub> NAAQS at these monitoring sites. The 2016 memorandum explained that the pertinent year for evaluating air quality for purposes of addressing interstate transport for the 2012 PM<sub>2.5</sub> NAAQS is 2021, the attainment deadline for 2012 PM<sub>2.5</sub> NAAQS nonattainment areas classified as Moderate. Accordingly, because the available data included 2017 and 2025 projected average and maximum PM<sub>2.5</sub> design values calculated through the CAMx photochemical model, the memorandum suggests approaches states might use to interpolate PM<sub>2.5</sub> values at sites in 2021.

For all, but one, monitoring sites in the eastern United States, the modeling data provided in the 2016 memorandum showed that monitors were expected to both attain and maintain the 2012 PM<sub>2.5</sub> NAAQS in both 2017 and 2025. The modeling results project that this one monitor, the Liberty monitor, (ID number 420030064), located in Allegheny County, Pennsylvania, will be above the 2012 annual PM<sub>2.5</sub> NAAQS in 2017, but only under the model's maximum projected conditions, which are used in EPA's interstate transport framework to identify maintenance receptors. The Liberty monitor (along with all the other Allegheny County monitors) is projected to both attain and maintain the NAAQS in 2025. The 2016 memorandum suggests that under such a condition (again, where EPA's photochemical modeling indicates an area will maintain the 2012 annual PM<sub>2.5</sub> NAAQS in 2025, but not in 2017), further analysis of the site should be performed to determine if the site may be a nonattainment or maintenance receptor in 2021 (which, again, is the attainment deadline for moderate PM<sub>2.5</sub> areas). The memorandum also indicates that for certain states with incomplete ambient monitoring data, additional information including the latest available data, should be analyzed to determine whether there are potential downwind air quality problems that may be impacted by transported emissions. This rulemaking

considers these analyses for Rhode Island, as well as additional analysis conducted by EPA during review of Rhode Island's submittal.

To develop the projected values presented in the memorandum, EPA used the results of nationwide photochemical air-quality modeling that it recently performed to support several rulemakings related to the ozone NAAQS. Base-year modeling was performed for 2011. Future-year modeling was performed for 2017 to support the proposed CSAPR Update for the 2008 Ozone NAAQS. *See* 80 FR 75705 (December 3, 2015). Future-year modeling was also performed for 2025 to support the Regulatory Impact Assessment of the final 2015 Ozone NAAQS.<sup>6</sup> The outputs from these model runs included hourly concentrations of PM<sub>2.5</sub> that were used in conjunction with measured data to project annual average PM<sub>2.5</sub> design values for 2017 and 2025. Areas that were designated as moderate PM<sub>2.5</sub> nonattainment areas for the 2012 annual PM<sub>2.5</sub> NAAQS in 2014 must attain the NAAQS by December 31, 2021, or as expeditiously as practicable. Although neither the available 2017 nor 2025 future-year modeling data correspond directly to the future-year attainment deadline for moderate PM<sub>2.5</sub> nonattainment areas, EPA believes that the modeling information is still helpful for identifying potential nonattainment and maintenance receptors in the 2017 through 2021 period. Assessing downwind PM<sub>2.5</sub> air-quality problems based on estimates of air-quality concentrations in a future year aligned with the relevant attainment deadline is consistent with the instructions from the United States Court of Appeals for the District of Columbia Circuit in *North Carolina v. EPA*, 531 F.3d 896, 911-12 (D.C. Cir. 2008), that upwind emission reductions should be harmonized, to the extent possible, with the attainment deadlines for downwind areas.

*Rhode Island's Submission for Prongs 1 and 2*

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<sup>6</sup> *See* 2015 ozone NAAQS RIA at: [www3.epa.gov/ttnecas1/docs/20151001ria.pdf](http://www3.epa.gov/ttnecas1/docs/20151001ria.pdf)

On December 6, 2017, RI DEM submitted an infrastructure SIP for the 2012 PM<sub>2.5</sub> NAAQS that addressed prongs 1 and 2. The state's SIP submission relied in part on EPA's analysis performed for the CSAPR rulemaking to conclude that the state will not significantly contribute to nonattainment or interfere with maintenance of the 2012 PM<sub>2.5</sub> NAAQS in any downwind area.

EPA analyzed the state's December 2017 submittal to determine whether it fully addressed the prong 1 and 2 transport provisions with respect to the 2012 PM<sub>2.5</sub> NAAQS. As discussed below, EPA concludes that emissions of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors (NO<sub>x</sub> and SO<sub>2</sub>) in Rhode Island will not significantly contribute to nonattainment or interfere with maintenance of the 2012 PM<sub>2.5</sub> NAAQS in any other state.

#### *Analysis of Rhode Island's Submission for the 2012 PM<sub>2.5</sub> NAAQS*

As noted above, the modeling discussed in EPA's 2016 memorandum identified one potential maintenance receptor for the 2012 PM<sub>2.5</sub> NAAQS at the Liberty monitor (ID number 420030064), located in Allegheny County. The memorandum also identified certain states with incomplete ambient monitoring data as areas that may require further analysis to determine whether there are potential downwind air quality problems that may be impacted by transported emissions.

While developing the 2011 CSAPR rulemaking, EPA modeled the impacts of all 38 eastern states in its modeling domain on fine particulate matter concentrations at downwind receptors in other states in the 2012 analysis year in order to evaluate the contribution of upwind states on downwind states with respect to the 1997 and 2006 PM<sub>2.5</sub>. Although the modeling was not conducted for purposes of analyzing upwind states' impacts on downwind receptors with respect to the 2012 PM<sub>2.5</sub> NAAQS, the contribution analysis for the 1997 and 2006 standards can be

informative for evaluating Rhode Island's compliance with the Good Neighbor provision for the 2012 standard.

This CSAPR modeling showed that Rhode Island had no discernable impact ( $0.000 \mu\text{g}/\text{m}^3$ ) on the Liberty monitor in Allegheny County, which is the only out-of-state monitor that may be a nonattainment or maintenance receptor in 2021. Although EPA has not proposed a specific threshold for evaluating the 2012  $\text{PM}_{2.5}$  NAAQS, EPA notes that Rhode Island's impact on the Liberty monitor is far below the threshold of 1% for the annual  $\text{PM}_{2.5}$  NAAQS (i.e.,  $0.12 \mu\text{g}/\text{m}^3$ ) that EPA previously used to evaluate the contribution of upwind states to downwind air-quality monitors. (A spreadsheet showing CSAPR contributions for ozone and  $\text{PM}_{2.5}$  is included in docket EPA-HQ-OAR-2009-0491-4228.) Therefore, even if the Liberty monitor were considered a receptor for purposes of transport, the EPA proposes to conclude that Rhode Island will not significantly contribute to nonattainment, or interfere with maintenance, of the 2012  $\text{PM}_{2.5}$  NAAQS at that monitor.

In addition, the Liberty monitor is already close to attaining the 2012  $\text{PM}_{2.5}$  NAAQS, and expected emissions reductions in the next four years will lead to additional reductions in measured  $\text{PM}_{2.5}$  concentrations. There are both local and regional components to measured  $\text{PM}_{2.5}$  levels. All monitors in Allegheny County have a regional component, with the Liberty monitor most strongly influenced by local sources. This is confirmed by the fact that annual average measured concentrations at the Liberty monitor have consistently been 2-4  $\mu\text{g}/\text{m}^3$  higher than other monitors in Allegheny County.

Specifically, previous CSAPR modeling showed that regional emissions from upwind states, particularly  $\text{SO}_2$  and  $\text{NO}_x$  emissions, contribute to  $\text{PM}_{2.5}$  nonattainment at the Liberty monitor. In recent years, large  $\text{SO}_2$  and  $\text{NO}_x$  reductions from power plants have occurred in Pennsylvania

and states upwind from the Greater Pittsburgh region. Pennsylvania's energy sector emissions of SO<sub>2</sub> will have decreased 166,000 tons between 2015 through 2017 as a result of CSAPR implementation. This is due to both the installation of emissions controls and retirements of electric generating units (EGUs). Projected power plant closures and additional emissions controls in Pennsylvania and upwind states will help further reduce both direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors. Regional emission reductions will continue to occur from current on-the-books federal and state regulations such as the federal on-road and non-road vehicle programs, and various rules for major stationary emissions sources. *See* proposed approval of the Ohio Infrastructure SIP for the 2012 PM<sub>2.5</sub> NAAQS (82 FR 57689; December 7, 2017).

In addition to regional emissions reductions and plant closures, additional local reductions to both direct PM<sub>2.5</sub> and SO<sub>2</sub> emissions are expected to occur and should contribute to further declines in Allegheny County's PM<sub>2.5</sub> monitor concentrations. For example, significant SO<sub>2</sub> reductions have recently occurred at US Steel's integrated steel mill facilities in southern Allegheny County as part of a 1-hr SO<sub>2</sub> NAAQS SIP.<sup>7</sup> Reductions are largely due to declining sulfur content in the Clairton Coke Work's coke oven gas (COG). Because this COG is burned at US Steel's Clairton Coke Works, Irvin Mill, and Edgar Thompson Steel Mill, these reductions in sulfur content should contribute to much lower PM<sub>2.5</sub> precursor emissions in the immediate future. The Allegheny SO<sub>2</sub> SIP also projects lower SO<sub>2</sub> emissions resulting from vehicle fuel standards, reductions in general emissions due to declining population in the Greater Pittsburgh region, and several shutdowns of significant sources of emissions in Allegheny County.

EPA modeling projections, the recent downward trend in local and upwind emissions reductions, the expected continued downward trend in emissions between 2017 and 2021, and

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<sup>7</sup> [www.achd.net/air/pubs/SIPs/SO2\\_2010\\_NAAQS\\_SIP\\_9-14-2017.pdf](http://www.achd.net/air/pubs/SIPs/SO2_2010_NAAQS_SIP_9-14-2017.pdf)

the downward trend in monitored PM<sub>2.5</sub> concentrations all indicate that the Liberty monitor will attain and be able to maintain the 2012 annual PM<sub>2.5</sub> NAAQS by 2021. *See* proposed approval and final approval of the Ohio Infrastructure SIP (82 FR 57689, December 7, 2017 and 83 FR 4845, February 2, 2018).

As noted in the 2016 memorandum, several states have had recent data-quality issues identified as part of the PM<sub>2.5</sub> designations process. In particular, some ambient PM<sub>2.5</sub> data for certain time periods between 2009 and 2013 in Florida, Illinois, Idaho, Tennessee, and Kentucky did not meet all data-quality requirements under 40 CFR part 50, appendix L. The lack of data means that the relevant areas in those states could potentially be in nonattainment or be maintenance receptors in 2021. However, as mentioned above, EPA's analysis for the 2011 CSAPR rulemaking with respect to the 2006 PM<sub>2.5</sub> NAAQS determined that Rhode Island's impact to all these downwind receptors would be well below the 1% contribution threshold for this NAAQS. That conclusion informs the analysis of Rhode Island's contributions for purposes of the 2012 PM<sub>2.5</sub> NAAQS as well. Given this, and the fact, discussed below, that the state's PM<sub>2.5</sub> design values for all ambient monitors have been well below the 2012 PM<sub>2.5</sub> NAAQS during the 2007 through 2009 period to the 2013 through 2015 period, EPA concludes that it is highly unlikely that Rhode Island significantly contributes to nonattainment or interferes with maintenance of the 2012 PM<sub>2.5</sub> NAAQS in areas with data-quality issues.<sup>8</sup>

Information in Rhode Island's December 2017 SIP submission corroborates EPA's proposed conclusion that Rhode Island's SIP meets its Good Neighbor obligations. The state's technical analysis in that submission includes 24-hour and annual PM<sub>2.5</sub> values for 2013 through 2015 for

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<sup>8</sup> Rhode Island's PM<sub>2.5</sub> design values for all ambient monitors are available in the Design Value Reports at [https://19january2017snapshot.epa.gov/air-trends/air-quality-design-values\\_.html](https://19january2017snapshot.epa.gov/air-trends/air-quality-design-values_.html).

the six official monitors in Rhode Island as well as for monitors in the neighboring states of Massachusetts and Connecticut, a list of Rhode Island's 10 largest point sources of PM<sub>2.5</sub>, and results of EPA's CSAPR modeling. As mentioned above, the state's PM<sub>2.5</sub> design values for all ambient monitors have been well below the 2012 PM<sub>2.5</sub> NAAQS since 2007 through 2009. In addition, the 24-hour and annual design values for all monitors in the neighboring states of Massachusetts and Connecticut also have been below the 2012 PM<sub>2.5</sub> NAAQS since 2007 through 2009.

At specific monitors in Rhode Island, the highest 24-hour and annual mean values satisfying minimum data completion criteria were 49 µg/m<sup>3</sup> in 1999 and 14.9 µg/m<sup>3</sup> in 2000, respectively, at a monitor in Providence.<sup>9</sup> However, since 2004, all monitors in the state have been below the 2012 PM<sub>2.5</sub> NAAQS.

Second, Rhode Island's sources are well-controlled. Rhode Island's 2017 submission indicates that the state has many SIP-approved regulations and programs that limit emissions of PM<sub>2.5</sub> and the PM<sub>2.5</sub> precursors SO<sub>2</sub> and NO<sub>x</sub>.<sup>10</sup> Among others, these regulations include APCR No. 3 "Particulate Emissions from Industrial Processes" (81 FR 47708; July 22, 2016); APCR No. 8 "Sulfur Content of Fuels" (83 FR 39888; August 13, 2018); APCR No. 9 "Air Pollution Control Permits" (78 FR 63383; October 24, 2013); APCR No. 13 "Particulate Emissions from Fossil Fuel Fired Steam or Hot Water Generating Units" (48 FR 13026; March 29, 1983); and APCR No. 27 "Control of Nitrogen Oxide Emissions" (83 FR 39888; August 13, 2018).

It should also be noted that Rhode Island is not in the CSAPR program because EPA analyses show that the state does not emit ozone-season NO<sub>x</sub> at a level that contributes

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<sup>9</sup>24-hour and annual PM<sub>2.5</sub> monitor values for individual monitoring sites throughout Rhode Island are available at <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report>.

<sup>10</sup> SO<sub>2</sub> and NO<sub>x</sub> contribute to the formation of PM<sub>2.5</sub>.

significantly to non-attainment or interferes with maintenance of the 1997 and 2006 PM<sub>2.5</sub> NAAQS in any other state.

For the reasons explained herein, EPA agrees with Rhode Island's conclusions and proposes to determine that Rhode Island will not significantly contribute to nonattainment or interfere with maintenance of the 2012 PM<sub>2.5</sub> NAAQS in any other state. Therefore, EPA proposes to approve the December 2017 infrastructure SIP submission from Rhode Island with regard to prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2012 PM<sub>2.5</sub> NAAQS.

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

To prevent significant deterioration of air quality, this sub-element requires SIPs to include provisions that prohibit any source or other type of emissions activity in one state from interfering with measures that are required in any other state's SIP under Part C of the CAA. One way for a state to meet this requirement, specifically with respect to 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 approved Rhode Island's latest NNSR regulations on April 21, 2015 (80 FR 22106). These regulations contain provisions for how the state must treat and control sources in nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR 51.

As noted above and in Element (C), Rhode Island's PSD program does not fully satisfy the requirements of EPA's PSD implementation rules. As stated previously, Rhode Island submitted, on March 26, 2018, a SIP revision to address these deficiencies, and EPA is reviewing this

submittal to verify that it satisfies the required provisions. Consequently, we are proposing to conditionally approve Rhode Island's infrastructure SIP submission for the 2012 PM<sub>2.5</sub> NAAQS related to section 110(a)(2)(D)(i)(II) Prong 3 for the reasons discussed under Element (C).

*Sub-Element 3: Section 110(a)(2)(D)(i)(II)–Visibility Protection (prong 4)*

Regarding 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, 2011, and 2013 memoranda recommend 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.

Rhode Island's Regional Haze SIP was approved by EPA on May 22, 2012 (77 FR 30214). Accordingly, EPA proposes that Rhode Island meets the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2012 PM<sub>2.5</sub> NAAQS.

*Sub-Element 4: Section 110(a)(2)(D)(ii)–Interstate Pollution Abatement.*

This sub-element requires that each SIP contain provisions requiring compliance with 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.

EPA approved Rhode Island's PSD program, as well as updates to that program, with the most recent approval occurring on April 21, 2015 (80 FR 22106), which includes a provision requiring notice to neighboring states of RI DEM's intention to either issue a draft PSD permit or deny a permit application. *See* APCR No. 9, section 9.12.3(e). Therefore, we propose to approve Rhode Island's compliance with the infrastructure SIP requirements of section 126(a) with respect to the 2012 PM<sub>2.5</sub> NAAQS. Rhode Island has no obligations under any other provision of section 126.

*Sub-Element 5: Section 110(a)(2)(D)(ii)–International Pollution Abatement.*

This sub-element also requires each SIP to contain provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. Rhode Island does not have any pending obligations under section 115 for the 2012 PM<sub>2.5</sub> NAAQS. Therefore, EPA is proposing that Rhode Island meets the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 2012 PM<sub>2.5</sub> NAAQS.

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

Section 110(a)(2)(E)(i) requires each SIP to provide assurances that the state will have adequate personnel, funding, and legal authority under state law to carry out its SIP. In addition, section 110(a)(2)(E)(ii) requires each state to comply with the requirements under CAA section 128 about state boards. 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 implementation of SIP obligations with respect to relevant NAAQS. Section 110(a)(2)(E)(iii), however, does not apply to this action because Rhode Island

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.*

Rhode Island, through its infrastructure SIP submittals, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. Rhode Island cites to RIGL § 23-23-5, which provides the Director of DEM with the legal authority to enforce air pollution control requirements. Additionally, this statute provides the Director with the authority to assess preconstruction permit fees and annual operating permit fees from air emissions sources and establishes a general revenue reserve account within the general fund to finance the state clean air programs. RI DEM further cites APCR No. 28, “Operating Permit Fees,” which requires that major sources pay annual operating permit fees. Finally, Section III of the 1972 RI SIP specifies RI DEM’s legal authority to implement SIP measures, and Section VII of the 1972 SIP describes the resources and manpower estimates for RI DEM.

EPA proposes that Rhode Island meets the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

*Sub-Element 2: State Board Requirements Under Section 128 of the CAA.*

Section 110(a)(2)(E)(ii) 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 Rhode Island, no board or body approves permits or enforcement orders; these are approved by the Director of RI DEM. Thus, with respect to this sub-element, Rhode Island is subject only to the requirements of paragraph (a)(2) of section 128 of the CAA (regarding conflicts of interest). The Rhode Island Code of Ethics (RIGL § 36-14) applies to state employees and public officials and requires disclosure of potential conflicts of interest. It also provides that “No person subject to this Code of Ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction, or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities.” *See* RIGL § 36-14-5(a). RIGL §§ 36-14-1 through -7 were approved by EPA into the Rhode Island SIP on April 20, 2016 (81 FR 23175).

Consequently, EPA proposes that Rhode Island has met the applicable infrastructure SIP requirements for this sub-element for the 2012 PM<sub>2.5</sub> 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. Lastly, the reports shall be available at reasonable times for public inspection.

Rhode Island's infrastructure submittal references existing state laws and regulations previously approved by EPA that require sources to monitor emissions and submit reports and that provide for the correlation of emissions data with emission limitations and for the public availability of emission data. For example, Rhode Island's submittal references RIGL § 23-23-5(16), which authorizes RI DEM to require a source to install, maintain, and use air pollution emission monitoring devices and to submit periodic reports on the nature and amounts of emissions. In addition, under RIGL § 23-23-13 and the Rhode Island public records act, *see* RIGL Title 38, emissions data are made available to the public and are not protected as "trade secret or proprietary information." With respect to state regulations, APCR No. 9, "Air Pollution Control Permits," requires emissions testing of permitted processes within 180 days of full operation and specifies that preconstruction permits issued contain an emissions testing section. In addition, APCR No. 6, "Continuous Emission Monitors," requires certain sources to install, calibrate, operate, and maintain a continuous emission monitoring system and to report certain emissions-related data to RI DEM. Finally, APCR No. 14, "Record Keeping and Reporting," requires emission sources to report emissions and other data to RI DEM annually, and provides that information in certain reports obtained pursuant to APCR No. 14 "will be correlated with applicable emission and other limitations and will be available for public inspection."

Therefore, EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

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

This section requires that a plan provide for state authority comparable 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 a combination of state statutes and regulations discussed in RI DEM’s submittal provides for authority comparable to that in CAA section 303. The statutes and regulations are: RIGL §§ 10-20, 23-23-16, 23-23.1-5, 23-23.1-7, 23-23.1-8, 42-17.1-2, and APCR No. 7. In our proposal to approve this requirement for Rhode Island’s infrastructure SIP submissions for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS (81 FR 10168; February 29, 2016), we explained how this combination of authorities provides Rhode Island with authority comparable to that in CAA § 303. *See* 81 FR 10168, 10177 (February 29, 2016). These statutes and the regulation apply in the same manner to particulate matter emissions as they do to emissions of the other NAAQS pollutants. Accordingly, for the reasons contained in our proposal to approve this element for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 lead, 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> infrastructure SIPs, we propose to find that this combination of state statutes and regulations provide for authority comparable to that in CAA § 303 for the 2012 PM<sub>2.5</sub> infrastructure SIP.

Section 110(a)(2)(G) also requires a state to submit for EPA approval a contingency plan (also known as an emergency episode plan) to implement the air agency’s emergency episode authority 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.* There is only one AQCR in Rhode Island

– the Metropolitan Providence Interstate AQCR – and Rhode Island’s portion thereof is classified as a Priority I area for PM, SO<sub>x</sub>, carbon monoxide, and ozone and as a Priority III area for NO<sub>2</sub>. *See* 40 CFR 52.2071. In general, contingency plans for Priority I, IA, and II areas must meet the applicable requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (“Prevention of Air Pollution Emergency Episodes”) for the relevant NAAQS, if the NAAQS is covered by those regulations. In the case of PM<sub>2.5</sub>, EPA has not promulgated regulations that provide the ambient levels to classify different priority levels for the 2012 standard (or any PM<sub>2.5</sub> NAAQS). *See* 40 CFR 51.150. Consequently, Rhode Island’s SIP is not required to contain an emergency contingency plan meeting the specific requirements of 40 CFR 51.151 and 51.152 with respect to the 2012 PM<sub>2.5</sub> NAAQS.

Although PM<sub>2.5</sub> is not explicitly included in the contingency plan requirements of 40 CFR subpart H, the EPA 2009 memorandum recommends in the context of the 2006 PM<sub>2.5</sub> NAAQS that states develop emergency episode plans for any area that has monitored and recorded 24-hour PM<sub>2.5</sub> levels greater than 140 µg/m<sup>3</sup> since 2006. EPA’s review of Rhode Island’s certified air-quality data in EPA’s Air Quality System (AQS) indicates that the highest 24-hour PM<sub>2.5</sub> concentration since 2006 (*i.e.*, data through 2017) is 92.5 µg/m<sup>3</sup>, which occurred in 2015 at a monitor in Providence. Although not expected, if PM<sub>2.5</sub> conditions were to change, Rhode Island does have general authority, as noted previously (81 FR 10168; February 29, 2016), to order a source to cease operations if it is determined that emissions from the source pose an immediate danger, or unreasonable and emergency risk, to public health or safety or to the environment. In addition, Rhode Island posts near real-time air-quality data, air-quality predictions and historical data on the RI DEM website. RI DEM’s predictions are also displayed daily in the *Providence Journal*. Alerts are sent by email to many affected parties, including emissions sources,

concerned individuals, schools, health and environmental agencies and the media. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions. Furthermore, daily forecasted ozone and fine-particle levels are made available on the internet through the EPA AirNow and EnviroFlash systems. Information about these two systems is available on EPA's website at [www.airnow.gov](http://www.airnow.gov). Notices are sent to EnviroFlash participants when levels are forecast to exceed the current 8-hour ozone or 24-hour PM<sub>2.5</sub> standard.

EPA proposes that Rhode Island meets the applicable infrastructure SIP requirements for section 110(a)(2)(G) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

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

This section requires that a state's SIP provide for revision in response to: changes in the NAAQS, availability of improved methods for attaining the NAAQS, or an EPA finding that the SIP is substantially inadequate. In 1973, it was determined that Rhode Island's original SIP did not fully satisfy section 110(a)(2)(H) and EPA promulgated federal regulations to address the gap in the SIP. *See* 40 CFR 52.2080. Since Rhode Island's December 6, 2017, submittal does not address the gap in the SIP that led to a disapproval in 1973, EPA proposes to find that Rhode Island has not met applicable infrastructure SIP requirements for element (H) with respect to the 2012 PM<sub>2.5</sub> NAAQS. Accordingly, EPA proposes to disapprove the state's submittal for element (H). No further action by EPA or the state is required, however, because remedying federal regulations are already in place. Moreover, mandatory sanctions under CAA section 179 are inapplicable, because the submittal is not required under CAA title I part D nor in response to a SIP call under CAA section 110(k)(5).

**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.**

Section 110(a)(2)(J) of the CAA requires that each SIP meet the applicable requirements of section 121 of the CAA (relating to consultation), section 127 of the CAA (relating to public notification), and part C of subchapter I of the CAA (relating to PSD and visibility protection). The evaluation of the submission from Rhode Island with respect to these requirements is described below.

*Sub-Element 1: Consultation with Government Officials.*

Pursuant to CAA section 121, a state must provide a satisfactory process for consultation with local governments and Federal Land Managers (FLMs) in carrying out its NAAQS implementation requirements.

Rhode Island General Law § 23-23-5, authorizes the RI DEM Director “[t]o advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, and other states and interstate agencies, and with effective groups in industries in furthering the purposes of this chapter.” EPA approved this statute into Rhode Island’s SIP on April 20, 2016. *See* 81 FR 23175. In addition, APCR No. 9, which is in Rhode Island’s SIP, *see* 78 FR 63383 (October 24, 2013), directs RI DEM to notify relevant municipal officials and FLMs, among

others, of tentative determinations by RI DEM with respect to permit applications for major stationary sources and major modifications.

EPA proposes that Rhode Island has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

*Sub-Element 2: Public Notification.*

Pursuant to CAA section 127, states must 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.

Rhode Island's APCR No. 10, "Air Pollution Episodes," specifies criteria for, and measures to be implemented during, air pollution alerts, warnings, and episodes. In addition, the RI DEM website includes near real-time air quality data, air quality predictions and a record of historical data. DEM's predictions are also displayed daily in the *Providence Journal*, a newspaper with statewide circulation. Alerts are sent by email to many affected parties, including emissions sources, concerned individuals, schools, health and environmental agencies and the media. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions. In addition, AQS summaries of the year's air-quality-monitoring results are issued annually. The summaries are sent to a mailing list of interested parties and posted on the RI DEM website. Rhode Island is also an active partner in EPA's AirNow and EnviroFlash air-quality alert programs. EPA proposes that Rhode Island meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

*Sub-element 3: PSD.*

State plans must meet applicable requirements of part C of the CAA related to PSD. Rhode Island'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. However, the December 2017 infrastructure submittal states that Rhode Island is amending APCR No. 9 to comply with 40 CFR 51.166 regarding PM<sub>2.5</sub> emissions and identifying NO<sub>x</sub> as a precursor to ozone. As stated previously, Rhode Island submitted, on March 26, 2018, a SIP to address these deficiencies, which EPA is currently reviewing to verify that it satisfies the required provisions. Consequently, we are proposing to conditionally approve the PSD sub-element of section 110(a)(2)(J) for the 2012 PM<sub>2.5</sub> 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.*

Regarding 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 memorandum, 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 2012 PM<sub>2.5</sub> NAAQS.

Based on the above analysis, EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(J) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

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

Section 110(a)(2)(K) of the Act requires that a SIP provide for the performance of such air-quality modeling as the EPA Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which EPA has established a NAAQS, and the submission, upon request, of data related to such air quality modeling. EPA has published the Guideline on Air Quality Models (“Guideline”) at 40 CFR part 51, Appendix W, for predicting the effects of emissions of criteria pollutants on ambient air quality. The Guideline is used by EPA, other federal, state, territorial, local, and tribal air quality agencies, and industry to prepare and review new or modified source permits, SIP submittals or revisions, conformity, and other air quality assessments required under the CAA and EPA regulations. EPA has interpreted section 110(a)(2)(K) to require a state submit or reference the statutory or regulatory provisions that provide the air agency with the authority to conduct such air quality modeling and to provide such modeling data to EPA upon request. *See* 2013 Memorandum at 55.

Rhode Island state law implicitly authorizes RI DEM to perform air quality modeling and to provide such modeling data to EPA upon request. *See* RIGL §§ 23-23-2, 23-23-5. In addition, Rhode Island APCR No. 9, “Air Pollution Control Permits,” requires permit applicants to submit air quality modeling based on applicable air quality models, data bases, and other requirements specified in the Guideline in Appendix W 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 to perform large-scale urban airshed modeling for ozone and PM, if necessary. EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2012 PM<sub>2.5</sub> 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 costs of reviewing, approving, implementing, and enforcing a permit.

Section 23-23-5 of the RIGL provides RI DEM with the authority to collect fees for preconstruction permits and operating permits for air emissions sources. In addition, RI DEM's "Rules and Regulations Governing the Establishment of Various Fees" sets forth permit fee requirements for air emissions sources and the legal authority to collect those fees. These rules and regulations are promulgated pursuant to RIGL Chapter 23-23 Air Pollution, and Chapter 42-35, Administrative Procedures. Rhode Island's infrastructure SIP submittal also refers to its regulations implementing its operating permit program pursuant to 40 CFR part 70. Rhode Island's title V permitting program, APCR No. 28, "Operating Permit Fees," requires major sources to pay annual operating permit fees. EPA's full approval of Rhode Island's title V program (APCR No. 28) became effective on November 30, 2001. *See* 66 FR 49839 (October 1, 2001). To gain this approval, Rhode Island demonstrated the ability to collect sufficient fees to run the program. The fees collected from title V sources are above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(L) for the 2012 PM<sub>2.5</sub> NAAQS.

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

To satisfy Element (M), states must provide for consultation with, and participation by, local political subdivisions affected by the SIP. Rhode Island's infrastructure submittals reference RIGL § 23-23-5, which provides for consultation with affected local political subdivisions and authorizes the RI DEM Director "to advise, consult, and cooperate with the cities and towns and other agencies of the state . . . . . and other states and interstate agencies . . . in furthering the

purposes of the state Clean Air Act (*i.e.*, RIGL chapter 23-23). EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### IV. Proposed Action.

EPA is proposing to approve the elements of the infrastructure SIP submitted by Rhode Island on December 6, 2017, for the 2012 PM<sub>2.5</sub> NAAQS, with the exception of certain aspects relating to the state’s PSD program, including 110(a)(2)(C)2, (D)2, and (J)3, which we are proposing to conditionally approve, and section 110(a)(2)(H), which we are proposing to disapprove. In regard to section (H), no further action by EPA or the state is required, however, since federal regulations are already in place that address the gap in the state’s submittal with respect to element (H).

Specifically, EPA’s proposed action regarding each infrastructure SIP requirement is contained in Table 1 below.

Table 1: Proposed action on Rhode Island’s infrastructure SIP submittal for the 2012 PM<sub>2.5</sub> NAAQS

Element	2012 PM <sub>2.5</sub> NAAQS
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD program for major sources and major modifications	A*
(C)3: PSD program for minor sources and minor modifications	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A
(D)2: PSD	A*
(D)3: Visibility Protection	A
(D)4: Interstate Pollution Abatement	A
(D)5: International Pollution Abatement	A
(E)1: Adequate resources	A
(E)2: State boards	A
(E)3: Necessary assurances with respect to local agencies	NA

(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	D
(I): Nonattainment area plan or plan revisions under part D	+
(J)1: Consultation with government officials	A
(J)2: Public notification	A
(J)3: PSD	A*
(J)4: Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the above table, the key is as follows:

A	Approve
A*	Approve but conditionally approve aspect of PSD program relating to the identification of NO <sub>x</sub> as a precursor of ozone and the revisions required by the 2010 NSR rule.
D	Disapprove, but no further action required because federal regulations already in place
+	Not germane to infrastructure SIPs
NA	Not applicable

As noted in Table 1, we are proposing to conditionally approve portions of Rhode Island's infrastructure SIP submittals pertaining to the state's PSD program for the 2012 PM<sub>2.5</sub> NAAQS. 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 Rhode Island 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.

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 comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this Federal Register.

## **V. Statutory and Executive Order Reviews.**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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);
- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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: December 19, 2018.

Alexandra Dunn,  
Regional Administrator,  
EPA Region 1.

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