



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2020-0223; FRL-10010-14-Region 1]

### **Air Plan Approval; Connecticut; Infrastructure State Implementation Plan Requirements for the 2015 Ozone Standard**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision addresses the infrastructure requirements of the Clean Air Act (CAA or Act)—excluding the interstate transport provisions—for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state’s air-quality management program are adequate to meet the state’s responsibilities under the CAA. This action is being taken under the Clean Air Act.

**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-2020-0223 at <https://www.regulations.gov>, or via email to [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.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, Air and Radiation Division, 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 and facility closures due to COVID-19. **FOR FURTHER INFORMATION CONTACT:** Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109 - 3912, tel. (617) 918-1684, email [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**

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).<sup>1</sup> Section 110(a)(1) of the CAA requires states to submit, within 3 years after

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<sup>1</sup> National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the

promulgation of a new or revised standard, SIPs meeting the applicable requirements of section 110(a)(2).<sup>2</sup> On September 7, 2018, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a revision to its State Implementation Plan (SIP). The SIP revision addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2)—excluding the “Good Neighbor” or “transport” provisions—for the 2015 ozone NAAQS.

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

EPA is acting on a SIP submission from Connecticut on the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS (excluding the transport provisions).

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.<sup>3</sup> Unless otherwise noted below, we

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level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

<sup>2</sup> SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under 110(a)(2) are referred to as infrastructure requirements.

<sup>3</sup> EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including EPA’s prior action on Connecticut’s

are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.<sup>4</sup> EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

**B. What guidance is EPA using to evaluate Connecticut's infrastructure 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, guidance document 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 13, 2013, guidance document entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)" (2013 memorandum).

**II. EPA's evaluation of Connecticut's Infrastructure SIP for the 2015 ozone standard**

In this notice of proposed rulemaking, EPA is proposing action on Connecticut's September 7, 2018, infrastructure SIP submission for the 2015 ozone NAAQS, excluding the interstate transport provisions (section 110(a)(2)(D)(i)), which will be addressed in a future action. In Connecticut's submission, a detailed list of Connecticut 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 2015 ozone NAAQS. The following review evaluates the state's submission in light of section 110(a)(2) requirements and

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infrastructure SIP to address the 2012 PM<sub>2.5</sub> NAAQS. *See* 83 FR 37437 (August 1, 2018).

<sup>4</sup> *See Montana Envtl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

relevant EPA guidance. For the state's September 2018 submission, we provide an evaluation of the applicable Section 110(a)(2) elements, excluding the transport provisions.

**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>5</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.

In its September 2018 submittal for the 2015 ozone NAAQS, Connecticut cites provisions of Connecticut General Statutes (CGS) and Regulations of Connecticut State Agencies (RCSA) in satisfaction of element A. Connecticut Public Act No. 11-80 established the CT DEEP, and CGS section 22a-6(a)(1) provides the Commissioner of CT DEEP authority to adopt, amend or repeal environmental standards, criteria and regulations. It is under this general grant of authority that the Commissioner has adopted emissions standards and control measures for a variety of sources and pollutants.

Under Element A of the September 2018 submittal, the state also cites more than 20 Regulations of Connecticut State Agencies (RCSA) that it has adopted to control the emissions related to ozone and ozone precursors (nitrogen oxides (NOx) and volatile organic compounds (VOCs). A few, with their EPA approval citation<sup>6</sup> are listed here: RCSA section 22a-174-3a(l),

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<sup>5</sup> See, for example, EPA's final rule on "National Ambient Air Quality Standards for Lead," 73 FR 66964, 67034 (November 12, 2008).

<sup>6</sup> The citations reference the most recent EPA approval of the stated rule or of revisions to the rule.

Nonattainment New Source Review (NNSR) (February 16, 2018, 83 FR 6968); RCSA sections 22a-174-22e, Control of nitrogen oxides emissions, -22f, High daily NOx emitting units at non-major sources of NOx, and -38, Municipal Waste Combustors (July 31, 2017, 82 FR 35454); and RCSA section 22a-174-30a, Stage I vapor recovery (July 31, 2017, 82 FR 35454).

EPA proposes that Connecticut meets the infrastructure requirements of section 110(a)(2)(A) for the 2015 ozone NAAQS.

**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 to make 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.

Connecticut statute, CGS section 22a-174(d), “provides the Commissioner with all incidental powers necessary to control air pollution.” CT DEEP operates an air-quality monitoring network, and EPA approved the state’s 2019 Annual Air Monitoring Network Plan on August 15, 2019.<sup>7</sup> Furthermore, Connecticut populates EPA’s Air Quality System (AQS) with air-quality monitoring data in a timely manner and provides EPA with prior notification when considering a

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<sup>7</sup> See EPA approval letter located in the docket for this action.

change to its monitoring network or plan. EPA proposes that Connecticut meets the infrastructure SIP requirements of section 110(a)(2)(B) for the 2015 ozone 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 for 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.*

State law provides the Commissioner of CT DEEP with the authority to enforce air pollution control requirements pursuant to CGS Title 22a. Specifically, CGS sections 22a-6 and 22a-6b authorize the Commissioner to inspect and investigate to ascertain whether violations of any statute, regulation, or permit may have occurred and to impose civil penalties. Additionally, CGS section 22a-171 requires the Commissioner to “adopt, amend, repeal, and enforce regulations . . . and do any other act necessary to enforce the provisions of” CGS sections 22a-170 through 22a-206, which provide CT DEEP with the authority to, among other things, enforce its regulations, issue orders to correct violations of regulations or permits, impose state administrative penalties, and seek judicial relief.

EPA proposes that Connecticut meets the enforcement of SIP measures requirements of section 110(a)(2)(C) for the 2015 ozone NAAQS.

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

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. EPA interprets the CAA as requiring each state to make an infrastructure SIP submission for a new or revised NAAQS demonstrating that the air agency has a complete PSD permitting program in place satisfying the current requirements for all regulated NSR pollutants. CT DEEP's EPA-approved PSD rules in RCSA sections 22a-174-1, 22a-174-2a, and 22a-174-3a contain provisions that address applicable requirements for all regulated NSR pollutants, including greenhouse gases (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<sub>x</sub> as a precursor to ozone. *See* 70 FR 71679 at 71699-700. Connecticut's EPA-approved PSD rules contain provisions needed to ensure that NO<sub>x</sub> is treated as a precursor to ozone. EPA approved the necessary revisions to RCSA section 22a-174-3a on August 1, 2018. *See* 83 FR 37437.

Except as noted below, Connecticut has a comprehensive PSD permitting program in place covering the structural PSD permitting program requirements for all regulated NSR pollutants.

EPA's PSD regulations at 40 CFR 51.166(l) require a State's SIP to "provide for procedures which specify that [a]ll applications of air quality modeling . . . shall be based on the applicable models, data bases, and other requirements specified in" EPA's Guideline on Air Quality Models in appendix W of 40 CFR part 51, which were most recently revised on January 17, 2017. 82 FR 5182; *see also* 82 FR 14324 (Mar. 20, 2017). As explained in our evaluation of section 110(a)(2)(K) requirements later in this notice, Connecticut's SIP currently provides that the DEEP Commissioner may request an owner or operator to submit an ambient air-quality impact analysis using air quality models, databases or other techniques that have been approved by the DEEP Commissioner, but does not specify that such models, databases, or techniques shall be based on requirements specified in appendix W. *See* RCSA § 22a-174-3a(i)(2). Connecticut DEEP has committed, however, to pursuing a revision to section 22a-174-3a(i)(2) that would provide that such models, databases, and other techniques must also have been approved by the EPA Administrator and submitting this revision, for inclusion in the SIP, to EPA within one year of our final approval of today's action. Because the EPA Administrator's approved modeling requirements are found in appendix W, this revision would satisfy the section 51.166(l) requirement that the SIP provide for procedures that specify that all applications of modeling be based on the requirements in appendix W. Consequently, we are proposing to conditionally approve Connecticut's submittal for the PSD sub-element of section 110(a)(2)(C) for the 2015 ozone 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. On February 28, 2003, EPA approved updates to Connecticut's minor NSR program. *See* 68 FR 9009. Connecticut and EPA rely 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 2015 ozone NAAQS.

We are proposing to find that Connecticut meets the requirement to have a SIP approved minor new source review permit program as required under section 110(a)(2)(C) for the 2015 ozone NAAQS.

**D. Section 110(a)(2)(D) – Interstate transport for the 2015 ozone standard.**

One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), also known as the “good neighbor” provisions, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution.

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two provisions of this section are referred to as Prong 1 (significant contribution to nonattainment) and Prong 2 (interference with maintenance) and together make up sub-element 1 of section 110(a)(2)(D). A state's SIP submission for Prongs 1 and 2 is also referred to as a state's “Transport SIP.” Today's action does not include a Transport SIP (i.e., Prongs 1 and 2 or sub-element 1). Connecticut's Transport SIP for the 2015 ozone NAAQS will be addressed in a future action.

Today's action, however, does contain Prong 3 and 4 of Section 110(a)(2)(D)(i)(II). These require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (Prong 3) or to protect visibility (Prong 4). Today's action also includes Section 110(a)(2)(D)(ii) of the Act, which requires SIPs to contain provisions to ensure compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

*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. As explained in the 2013 memorandum, a state may meet this requirement with respect to in-state sources and pollutants that are subject to PSD permitting through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. As discussed above under element C, Connecticut's PSD program fully satisfies the requirements of EPA's PSD implementation rules, with one exception. As also noted in our discussion of element C, Connecticut DEEP has committed to pursuing a revision to its regulations to address the modeling issue. Consequently, EPA has in today's notice proposed to conditionally approve all of the PSD-related elements of this infrastructure SIP.

As also explained in the 2013 memorandum, a state may meet the prong 3 requirement with respect to in-state sources and pollutants subject to nonattainment NSR permitting through a fully approved NNSR program. With respect to NNSR, Connecticut 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. RCSA section 22a-174-3a(k) and 3a(i).

EPA proposes to conditionally approve Connecticut for the PSD requirements of 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS

*Section 110(a)(2)(D)(i)(II)–Visibility Protection (prong 4).*

With regard to 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 memorandum, 2011 memorandum, and 2013 memorandum 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 include all measures needed to achieve the state’s apportionment of emission reduction obligations agreed upon through a regional planning process and will, therefore, ensure that emissions from sources under the air agency’s jurisdiction are not interfering with measures required to be included in other air agencies’ plans to protect visibility. EPA approved Connecticut’s Regional Haze SIP on July 10, 2014. *See* 79 FR 39322. Accordingly, EPA proposes that Connecticut meets the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS.

*Section 110(a)(2)(D)(ii)–Interstate Pollution Abatement.*

This sub-element requires each SIP to 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.

On July 24, 2015 (80 FR 43960), EPA approved revisions to Connecticut's PSD program, including the element pertaining to notification to neighboring states of the issuance of PSD permits. Therefore, we propose to approve Connecticut's compliance with the infrastructure SIP requirements of section 126(a) with respect to the 2015 ozone NAAQS. Connecticut has no obligations under any other provision of section 126, and no source or sources within the state are the subject of an active finding under section 126 of the CAA with respect to the 2015 ozone NAAQS.

*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. Section 115 authorizes the Administrator to require a state to revise its SIP to alleviate international transport into another country where the Administrator has made a finding with respect to emissions of the particular NAAQS pollutant and its precursors, if applicable. There are no final findings under section 115 of the CAA against Connecticut with respect to the 2015 ozone NAAQS. Therefore, EPA is proposing that Connecticut meets the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA for the 2015 ozone 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 for state boards in CAA 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 implementation of SIP obligations with respect to relevant NAAQS. Section 110(a)(2)(E)(iii), however, does not apply to this action because Connecticut 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.*

Connecticut, through its infrastructure SIP submittal, has documented that its air agency has authority and resources to carry out its SIP obligations. CGS section 22a-171 authorizes the CT DEEP Commissioner to enforce the state's air laws, accept and administer grants, and exercise incidental powers necessary to carry out the law. The Connecticut SIP, as originally submitted on March 3, 1972, and subsequently amended, provides additional descriptions of the organizations, staffing, funding and physical resources necessary to carry out the plan.

EPA proposes that Connecticut meets the infrastructure SIP requirements of this portion of section 110(a)(2)(E) for the 2015 ozone 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. Section 128 further provides that a state may adopt more stringent conflicts of interest requirements and requires EPA to approve any such requirements submitted as part of a SIP.

In Connecticut, no board or body approves permits or enforcement orders; these are approved by the Commissioner of CT DEEP. Thus, with respect to this sub-element, Connecticut is subject only to the requirements of paragraph (a)(2) of section 128 of the CAA (regarding conflicts of interest).

Connecticut's September 7, 2018, infrastructure SIP refers to the state's conflict-of-interest provisions in CGS section 1-85, which apply to all state employees and public officials. Section 1-85 prevents the Commissioner from acting on a matter in which the Commissioner has an interest that is "in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of" Connecticut. EPA approved CGS section 1-85 into the Connecticut SIP on June 3, 2016. *See* 81 FR 35636.

EPA proposes that Connecticut meets the infrastructure SIP requirements of this portion of section 110(a)(2)(E) for the 2015 ozone 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.

CGS section 22a-6(a)(5) authorizes the Commissioner to enter at all reasonable times, any public or private property (except a private residence) to investigate possible violations of any statute, regulation, order or permit. Additionally, CGS section 22a-174 authorizes the Commissioner to require periodic inspection of sources of air pollution and to require any person to maintain, and to submit to CT DEEP, certain records relating to air pollution or to the operation of facilities designed to abate air pollution. For monitoring possible air violations, CT DEEP implements RCSA section 22a-174-4 (Source monitoring, record keeping and reporting) to require the installation, maintenance, and use of emissions monitoring devices and to require periodic reporting to the Commissioner of the nature and extent of the emissions. On July 16, 2014, EPA approved Section 22a-174-4 into the Connecticut SIP. *See* 79 FR 41427.

Additionally, CT DEEP implements RCSA section 22a-174-5 (Methods for sampling, emissions testing, sample analysis, and reporting), which provides, among other things, specific test methods to be used to demonstrate compliance with various aspects of Connecticut's air regulations. EPA approved this rule on December 19, 1980. *See* 46 FR 43418. Furthermore, under RCSA section 22a-174-10 (Public availability of information) emissions data are to be available to the public and are not entitled to protection as a trade secret. EPA approved this rule on October 28, 1972. *See* 37 FR 23085.

Connecticut routinely collects information on air emissions from its industrial sources and makes this information available to the public. In addition, RCSA section 22a-174-10 requires that emission data made public by CT DEEP shall be presented in such a manner as to show the relationship (or correlation) between measured emissions and the applicable emission limitations or standards, as required by CAA § 110(a)(2)(F)(iii).

Therefore, EPA proposes that Connecticut meets the infrastructure SIP requirements of section 110(a)(2)(F) for the 2015 ozone 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.”

Connecticut’s September 7, 2018, infrastructure SIP notes that CGS section 22a-181 (Emergency action) authorizes the Commissioner of the CT DEEP to issue an order requiring any person to immediately reduce or discontinue air pollution as required to protect the public health or safety. In addition, in a letter to EPA dated August 5, 2015, Connecticut stated that CGS section 22a-7 provides the Commissioner with emergency powers similar to those provided to the EPA Administrator in section 303.<sup>8</sup> Specifically, CGS section 22a-7 states that “whenever he [the Commissioner] finds that any person is causing, engaging in or maintaining, or is about to cause, engage in or maintain, any condition or activity which, in his judgment, will result in or is likely to result in imminent and substantial damage to the environment, or to public health within the jurisdiction of the Commissioner under the provisions of chapters 440, 441, 442, 445,

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<sup>8</sup> August 5, 2015, letter from Connecticut is included in the docket for today’s action.

446a, 446c [Air Pollution Control] ... may, without prior hearing, issue a cease and desist order in writing to such person to discontinue, abate or alleviate such condition or activity.”

This section further provides the Commissioner with the authority to seek a court “to enjoin any person from violating a cease and desist order issued pursuant to [section 22a-7] and to compel compliance with such order.”

Section 110(a)(2)(G) requires a state to submit for EPA approval a contingency 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 for certain pollutants. *See* 40 CFR 51.150. This requirement may be satisfied by submitting a plan that meets 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. Connecticut has “*Air pollution emergency episode procedures*” at RCSA section 22a-174-6 that EPA has previously evaluated and approved as satisfying the requirements of section 110(a)(2)(G) in the context of ozone. *See* 81 FR 35636 (June 3, 2016); 80 FR 54471 (September 10, 2015).

We propose to find that Connecticut law provides for authority comparable to that provided to the Administrator in section 303 and adequate contingency plans to implement that authority. Therefore, EPA proposes that Connecticut meets the applicable infrastructure SIP requirements for section 110(a)(2)(G) with respect to contingency plans for the 2015 ozone NAAQS.

#### **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 EPA finds that the SIP is substantially inadequate. To address this requirement, Connecticut’s September 7, 2018, infrastructure SIP submittal certifies

that its SIP may be revised should EPA find that it is substantially inadequate to attain a standard or to comply with any additional requirements under the CAA, and notes that CGS section 22a-174(d) grants the Commissioner all incidental powers necessary to control and prohibit air pollution. EPA proposes that Connecticut meets the infrastructure SIP requirements of section 110(a)(2)(H) for the 2015 ozone NAAQS.

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

Section 110(a)(2)(I) provides that each plan or plan revision for an area designated as a nonattainment area shall meet the applicable requirements of part D of the CAA. EPA interprets section 110(a)(2)(I) to be inapplicable to the infrastructure SIP process because specific SIP submissions for designated nonattainment areas, as required under part D, are subject to a different submission schedule under subparts 2 through 5 of part D, extending as far as 10 years following area designations for some elements, whereas infrastructure SIP submissions are due within three years after adoption or revision of a NAAQS. Accordingly, 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 this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).” The evaluation of the submission from Connecticut 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.

CGS section 22a-171 (Duties of Commissioner of Energy and Environmental Protection) directs the Commissioner to consult with agencies of the United States, agencies of the state, political subdivisions and industries and any other affected groups in matters relating to air quality. Additionally, CGS section 22a-171, which EPA approved into Connecticut's SIP on June 3, 2016 (81 FR 35636), directs the Commissioner to initiate and supervise statewide programs of air pollution control education and to adopt, amend, repeal and enforce air regulations.

Furthermore, RCSA section 22a-174-2a, which EPA approved into the Connecticut SIP on July 24, 2015 (80 FR 43960), directs CT DEEP to notify relevant municipal officials and FLMs, among others, of tentative determinations by CT DEEP with respect to certain permits. Therefore, EPA proposes that Connecticut meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) for the 2015 ozone 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.

As part of the fulfillment of CGS section 22a-171 (Duties of Commissioner of Energy and Environmental Protection), Connecticut issues press releases and posts warnings on its website advising people what they can do to help prevent NAAQS exceedances and avoid adverse health

effects on poor air quality days. Connecticut is also an active partner in EPA's AirNow and Enviroflash air-quality-alert programs. In addition, in 2014, Connecticut revised CGS section 4-168 to require that state regulations be submitted through the state's e-regulations system, thus creating an additional way for the public to access any changes to state regulations.

EPA proposes that Connecticut meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) for the 2015 ozone NAAQS.

*Sub-Element 3: PSD.*

EPA has already discussed Connecticut's PSD program in the context of infrastructure SIPs in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and determined that it satisfies the requirements of EPA's PSD implementation rules, with the exception of the modeling provision. Therefore, the SIP also satisfies the PSD sub-element of section 110(a)(2)(J) for the 2015 ozone NAAQS, except for the modeling requirement. For the same reasons discussed under element C above, EPA proposes to conditionally approve the SIP for the PSD sub-element of section 110(a)(2)(J) for the 2015 ozone NAAQS.

*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 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 2015 ozone NAAQS.

Based on the above analysis, EPA proposes that Connecticut meets the infrastructure SIP requirements of sub-elements 1-3 of section 110(a)(2)(J) for the 2015 ozone NAAQS. We are not proposing action on sub-element 4 because, as noted above, it is not germane to infrastructure SIPs.

**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 modeling guidelines at 40 CFR part 51, Appendix W, for predicting the effects of emissions of criteria pollutants on ambient air quality. EPA also recommends in the 2013 memorandum that, to meet section 110(a)(2)(K), 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.

CGS section 22a–5 (Duties and powers of commissioner) implicitly authorizes the Commissioner of the CT DEEP to perform air quality modeling to predict effects on air quality of emissions of any NAAQS pollutant and to submit such data to EPA upon request. Connecticut reviews the potential impact of major sources consistent with 40 CFR part 51, appendix W, “Guidelines on Air Quality Models.” In May 2019, Connecticut DEEP issued an “Ambient Impact Analysis Guideline” for performing stationary source air-quality modeling in the state.<sup>9</sup> This guideline recommends procedures that are consistent with EPA’s modeling guidelines at 40 CFR part 51, Appendix W, as revised January 2017. In its submittal, Connecticut also cites

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<sup>9</sup> [https://www.ct.gov/deep/lib/deep/air/compliance\\_monitoring/modeling/final\\_aiag\\_2018.pdf](https://www.ct.gov/deep/lib/deep/air/compliance_monitoring/modeling/final_aiag_2018.pdf)

RCSA section 22a-174-3a(i), which authorizes the commissioner to request any owner or operator to submit an ambient air-quality impact analysis using applicable air quality models, databases, or other techniques approved by the commissioner. CT DEEP updated RCSA section 22a-174-3a(i), effective April 2014. In addition, CT DEEP has committed by letter dated January 27, 2020, to pursue revisions to RCSA section 22a-174-3a(i) that would further specify that the air quality models, databases, and other techniques used in an ambient air-quality impact analysis must also be approved by the EPA Administrator and to submit them to EPA within one year of EPA final approval of today's proposed action.<sup>10</sup> The EPA Administrator's approved air quality models, databases, and other requirements are found in EPA's modeling guidelines at 40 CFR part 51, Appendix W. Thus, with this revision, Connecticut's SIP would provide for the performance of such air quality modeling as the EPA Administrator has prescribed.

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 airshed modeling for ozone and PM, if necessary.

Because Connecticut has committed to submit, but has not yet submitted, necessary revisions to RCSA section 22a-174-3a(i) that would provide for the performance of such air quality modeling as the EPA Administrator may prescribe, EPA proposes to conditionally approve section 110(a)(2)(K) for the 2015 ozone 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.

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<sup>10</sup> January 27, 2020, letter from Connecticut is included in the docket for today's action.

EPA's full approval of Connecticut's Title V program became effective on May 31, 2002. *See* 67 FR 31966. To gain this approval, Connecticut demonstrated the ability to collect sufficient fees to run the program. CGS section 22a-174(g) directs the Commissioner of CT DEEP to require the payment of a fee sufficient to cover the reasonable cost of reviewing and acting upon an application for, and monitoring compliance with, any state or federal permit, license, registration, order, or certificate. CT DEEP implements this directive through state regulations at RCSA sections 22a-174-26 and 22a-174-33, which contain specific requirements related to permit fees, including fees for Title V sources. EPA proposes that Connecticut meets the infrastructure SIP requirements of section 110(a)(2)(L) for the 2015 ozone 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.

Connecticut's September 2018 infrastructure SIP submittal cites CGS section 22a-171, Duties of Commissioner of Energy and Environmental Protection, which authorizes the commissioner to consult with, among others, "agencies of the state, political subdivisions and industries and any other affected groups in furtherance of the purposes of this chapter [i.e., Connecticut's air pollution control laws]." CT DEEP also references CGS section 4-168 (Notice prior to action on regulations), which provides a public participation process for all stakeholders that includes a minimum of a 30-day comment period and an opportunity for public hearing for all SIP-related actions. Connecticut notes that monthly meetings of the State Implementation Plan Revision Advisory Committee provide an additional forum for consultation and participation by the public and other stakeholders on air-quality-related topics. EPA proposes

that Connecticut meets the infrastructure SIP requirements of section 110(a)(2)(M) for the 2015 ozone NAAQS.

### III. Proposed Action

EPA is proposing to approve most of the elements of the infrastructure SIP submitted by Connecticut on September 7, 2018, for the 2015 ozone NAAQS. Today’s action does not include the “good neighbor” provisions (i.e., section 110(a)(2)(D)(i)), also known as a state’s Transport SIP. Connecticut’s Transport SIP for the 2015 ozone NAAQS will be addressed in a future action. In addition, EPA is proposing to conditionally approve the PSD-related requirements of Elements C, D, and J and to conditionally approve Element K, Air quality modeling and data, provided that the state submits in a timely manner the requirements needed for full approval of these Elements.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

EPA’s proposed action regarding each infrastructure SIP requirement for the 2015 ozone NAAQS is contained in Table 1 below.

Table 1: Proposed action on Connecticut’s infrastructure SIP submittal for the 2015 ozone NAAQS

Element	2015 ozone 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	CA
(C)3: PSD program for minor sources and minor	A

modifications	
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	No action
(D)2: PSD	CA
(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	A
(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	CA
(J)4: Visibility protection	+
(K): Air quality modeling and data	CA
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the above table, the key is as follows:

A	Approve
CA	Conditionally Approve
+	Not germane to infrastructure SIPs
No action	EPA is taking no action on this infrastructure requirement.
NA	Not applicable

EPA is proposing to conditionally approve the SIP for the PSD-related requirements of sections 110(a)(2)(C), (D)(i)(II), and (J), as well as for section 110(a)(2)(K) of the SIP revision submitted by Connecticut on September 7, 2018, as a revision to the SIP, provided that the State submits in a timely manner the necessary revisions to RCSA section 22a-174-3a(i) needed to fully approve this Element.

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.

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 the necessary revisions to RCSA section 22a-174-3a(i) to satisfy requirements of section 110(a)(2)(K) of Connecticut's infrastructure SIP for the 2015 ozone NAAQS. 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 Connecticut 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 legislative authority. If EPA disapproves the new submittal, the conditionally approved section 110(a)(2)(K) of Connecticut's infrastructure SIP for the 2015 ozone NAAQS will also be disapproved at that time. If EPA approves the submittal, section 110(a)(2)(K) of the state's infrastructure SIP for the 2015 ozone NAAQS will be fully approved in its entirety and replace the conditionally approved Element in the SIP.

If EPA determines that it cannot issue a final conditional approval or if the conditional approval is converted to a disapproval, such action will trigger EPA's authority to impose sanctions under section 110(m) of the CAA at the time EPA issues the final disapproval or on the date the State fails to meet its commitment. In the latter case, EPA will notify the State by letter that the conditional approval has been converted to a disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

#### **IV. 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);
- 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: May 20, 2020.

Dennis Deziel,  
Regional Administrator,  
EPA Region 1.

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