



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2020-0178; EPA-R01-OAR-2017-0344; FRL-10012-69-Region 1]

### Air Plan Approval; New Hampshire; Infrastructure State Implementation Plan

### Requirements for the 2015 Ozone and 2012 PM<sub>2.5</sub> Standards

**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 New Hampshire. This revision addresses the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). This proposed action includes all elements of these infrastructure requirements except for the “Good Neighbor” or “transport” provisions, which will be addressed in a future action. We are also proposing to grant the state an exemption from the infrastructure SIP contingency plan obligation for ozone, and to conditionally approve several elements of New Hampshire’s submittal relating to air-quality modeling requirements. In addition, we are proposing to correct errors in our previous approval of an infrastructure SIP submission from New Hampshire for the 2012 PM<sub>2.5</sub> NAAQS and to conditionally approve several elements of that submittal.

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-2020-0178 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 promulgation of a new or revised standard, SIPs meeting the applicable requirements of section 110(a)(2).<sup>2</sup> On September 5, 2018, the New Hampshire Department of Environmental Services (NHDES) 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) for the 2015 ozone NAAQS.

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

EPA is acting on the New Hampshire SIP submission on the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS, except the transport provisions, which will be addressed in a future action. We are also proposing to correct errors in our

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

previous approval of an infrastructure SIP submission from New Hampshire for the 2012 PM<sub>2.5</sub> NAAQS and to conditionally approve several elements of that submittal, as explained in our discussion of CAA section 110(a)(2)(K) below.

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 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.

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<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 New Hampshire’s infrastructure SIP to address the 2008 Ozone NAAQS. *See* 80 FR 42446 (July 17, 2015).

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

**B. What guidance is EPA using to evaluate New Hampshire’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 New Hampshire’s Infrastructure SIP for the 2015 ozone standard.**

In New Hampshire’s submission, a detailed list of New Hampshire 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 relevant EPA guidance. For the state’s September 5, 2018, infrastructure SIP 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, New Hampshire cites a number of state laws and regulations in satisfaction of element A. The infrastructure SIP cites New Hampshire's Revised Statutes Annotated (RSA) at Chapter 21-O, which established the NHDES, and RSA Chapter 125-C, which gives the Commissioner of NHDES the authority to develop rules and regulations necessary to meet state and federal ambient air quality standards.

In satisfaction of element A, NHDES also cites 10 state regulations that it has adopted to control emissions related to ozone and the ozone precursors, nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs). Some of these, with their EPA approval citation,<sup>6</sup> are listed here: Chapter Env-A 1200 "Volatile Organic Compounds (VOCs) Reasonably Available Control Technology (RACT)" (81 FR 53926; August 15, 2016); Chapter Env-A 1300 "Nitrogen Oxides (NO<sub>x</sub>) RACT" (79 FR 49458; August, 21, 2014); Chapter Env-A 2300 "Mitigation of Regional Haze" (81 FR 70360; October 12, 2016); and Chapter Env-A 3200 "NO<sub>x</sub> Budget Trading Program" (65 FR 68078; November 14, 2000).

EPA proposes that New Hampshire 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.**

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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.

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.

NHDES continues to operate a monitoring network, and EPA approved the state's 2019/2020 Annual Network Review and Plan on August 15, 2019.<sup>7</sup> Furthermore, NHDES 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 change to its monitoring network or plan.

Under element B of its September 5, 2018, infrastructure SIP submittal for the 2015 ozone NAAQS, NHDES cites RSA Chapter 125-C:6 III, IV and XVI, which grants the Commissioner "the power and duty to conduct studies related to air quality, to disseminate the results, and to assure the reliability and accuracy of monitoring equipment to meet federal EPA standards." EPA proposes that New Hampshire has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2015 ozone NAAQS.

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<sup>7</sup> EPA's approval letter is included in the docket for this action.

**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*

NHDES staffs and implements an enforcement program pursuant to RSA Chapter 125-C, Air Pollution Control, of the New Hampshire Statutes. Specifically, RSA Chapter 125-C:15, Enforcement, authorizes the Commissioner of the NHDES or the authorized representative of the Commissioner, upon finding a violation of Chapter 125-C has occurred, to issue a notice of violation or an order of abatement, and to include within it a schedule for compliance. Additionally, RSA 125-C:15 I-b, II, III, and IV provide for penalties for violations of Chapter 125-C.

EPA proposes that New Hampshire has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

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

Prevention of significant deterioration (PSD) applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS. 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. New Hampshire's EPA-approved PSD rules, contained at Part Env-A 619, contain provisions that address applicable requirements for all regulated NSR pollutants, including greenhouse gases (GHGs).

New Hampshire implements the PSD program by, for the most part, incorporating by reference the federal PSD program at 40 CFR 52.21, as it existed on a specific date. The state periodically updates the PSD program by revising the date of incorporation by reference and submitting the change as a SIP revision. As a result, the SIP revisions generally reflect changes to PSD requirements that the EPA has promulgated prior to the revised date of incorporation by reference. To address the 2008 NSR Rule and the 2010 NSR Rule, New Hampshire submitted revisions to its PSD regulations on November 15, 2012, that incorporated by reference the federal PSD program codified in the July 1, 2011, edition of 40 CFR 52.21. On September 25, 2015, EPA approved these revisions into the SIP as incorporating the necessary changes obligated by the 2008 NSR Rule and the 2010 NSR Rule. *See* 80 FR 57722. On May 25, 2017, EPA approved additional updates to NHDES's PSD program. *See* 82 FR 24057.

New Hampshire's revisions submitted on November 15, 2012, also satisfy the requirements of 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) published on November 29, 2005. *See* 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 id.* at 71699-700. The required revisions to the federal PSD program are codified in 40 CFR 51.166(b) and (i) and in 40 CFR 52.21(b) and (i). By incorporating the Federal provisions at 40 CFR 52.21(b) and (i) as of July 1, 2011, the New Hampshire’s November 15, 2012, submittal also included the revisions made to the PSD program by the Phase 2 Rule in 2005 regarding NO<sub>x</sub> as a precursor to ozone. *See* Part Env-A 619.03(a). Thus, New Hampshire’s PSD program is consistent with the requirements of the Phase 2 Rule.

EPA proposes that New Hampshire has a comprehensive PSD permitting program in place satisfying the PSD sub-element of 110(a)(2)(C), with one exception. 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 was 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, New Hampshire’s SIP currently references an earlier version of appendix W that has since been superseded by the January 17, 2017, revisions. *See* Part Env-A 619.03(a), *PSD Program Requirements*. Therefore, New Hampshire’s SIP must be updated to refer to an edition of EPA’s regulations that incorporates the January 17, 2017, revisions to appendix W.

As noted under section 110(a)(2)(K), NHDES committed in a letter dated June 3, 2020, to pursuing revisions to Part Env-A 619.03 to update the reference to 40 CFR 52.21 so as to incorporate EPA’s current “Guideline on Air Quality Models” in appendix W to 40 CFR Part 51,

and to submitting these revisions to EPA within one year of our final approval of today's proposed 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 New Hampshire's submittal for the PSD sub-element of section 110(a)(2)(C) for the 2015 ozone NAAQS.

We are also proposing to correct our December 4, 2018, final action on New Hampshire's infrastructure SIP for the 2012 PM<sub>2.5</sub> NAAQS, which was submitted to EPA on December 22, 2015. *See* 83 FR 62464. That correction entails replacing our previous full approval for this PSD sub-element with a conditional approval based on the state's commitment to submit in a timely manner the necessary revisions to New Hampshire Part Env-A 619.03 needed to fully approve this infrastructure sub-element. This correction is explained in more detail in the discussion of section 110(a)(2)(K) below.

### *Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications*

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulate emissions of the relevant NAAQS pollutants.

EPA approved New Hampshire's minor NSR program on September 22, 1980 (45 FR 62814), and approved updates to the program on August 14, 1992 (57 FR 36606). New Hampshire 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 2008 or 2015 ozone NAAQS.

We are proposing to find that New Hampshire has met the requirement to have a SIP-approved minor new source review permit program as required under Section 110(a)(2)(C) for the 2015 ozone NAAQS.

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

One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), also known as the “good neighbor” provision, 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.

In particular, 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. EPA commonly refers to these requirements as Prong 1 (significant contribution to nonattainment) and Prong 2 (interference with maintenance). A state’s SIP submission for Prongs 1 and 2 is also referred to as a state’s “Transport SIP.” In today’s action, EPA is not evaluating New Hampshire’s Transport SIP (i.e., Prongs 1 and 2; combined as (D)1 in Table 1 below). EPA will address New Hampshire’s Transport SIP for the 2015 ozone NAAQS in a future action.

Today’s action, however, does address Section 110(a)(2)(D)(i)(II), which 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 of the Act to

prevent significant deterioration of air quality and to protect visibility. EPA commonly refers to these requirements as Prong 3 (Prevention of Significant Deterioration) and Prong 4 (Visibility Protection). Today's action also addresses Section 110(a)(2)(D)(ii) of the Act, which requires SIPs to contain provisions to ensure compliance with sections 126 and 115 of the Act relating to interstate and international pollution abatement, respectively.

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,<sup>8</sup> 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. EPA discussed New Hampshire's PSD permitting program above under Section 110(a)(2)(C).

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 New Hampshire's NNSR regulations on July 27, 2001, and updates to these regulations on May 25, 2017. See 66 FR 39104 and 82 FR 24057, respectively. These NNSR 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 part 51.

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<sup>8</sup> Included in the docket for today's action.

As discussed above under Section 110(a)(2)(C), New Hampshire's PSD program fully satisfies the requirements of EPA's PSD implementation rules, with one exception related to air quality models. However, as also noted under Section 110(a)(2)(C), New Hampshire has committed to pursuing revisions to Part Env-A 619.03, *PSD Program Requirements*, to update the reference to 40 CFR 52.21 so as to incorporate EPA's current "Guideline on Air Quality Models" in appendix W to 40 CFR Part 51, and to submitting these revisions to EPA within one year of our final approval of today's proposed action. Therefore, EPA proposes to conditionally approve New Hampshire's submittal for the PSD requirements of 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS.

We are also proposing to correct our December 4, 2018, final action on New Hampshire's infrastructure SIP for the 2012 PM<sub>2.5</sub> NAAQS, which was submitted to EPA on December 22, 2015. *See* 83 FR 62464. That correction entails replacing our previous full approval for this PSD sub-element of 110(a)(2)(D)(i)(II) with a conditional approval based on the state's commitment to submit in a timely manner the necessary revisions to New Hampshire Part Env-A 619.03 needed to fully approve this infrastructure sub-element. This correction is explained in more detail in the discussion of section 110(a)(2)(K) below.

*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.<sup>9</sup>

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.

New Hampshire's Regional Haze SIP was approved by EPA on August 22, 2012. *See* 77 FR 50602. Accordingly, EPA proposes that New Hampshire 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 that each SIP contain provisions requiring compliance with requirements of CAA 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 May 25, 2017, EPA approved into the New Hampshire SIP revisions to the state's PSD program that require the NHDES to provide notice of a draft PSD permit to, among other entities, any state whose lands may be affected by emissions from the source. *See* Parts Env-A 621.03, .04(e)(3); 82 FR 24057 at 24060; *see also* Part Env-A 619.07(d). These public notice

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<sup>9</sup> All referenced memoranda are included in the docket for today's action.

requirements are consistent with the Federal SIP-approved PSD program's public notice requirements for affected states under 40 CFR 51.166(q). Therefore, we propose to approve New Hampshire's compliance with the infrastructure SIP requirements of CAA section 126(a) for the 2015 ozone NAAQS. New Hampshire has no obligations under any other provision of CAA section 126, and no source or sources within the state are the subject of an active finding under section 126 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 CAA 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 a NAAQS pollutant and its precursors, if applicable. There are no final findings under section 115 against New Hampshire with respect to the 2015 ozone NAAQS. Therefore, EPA is proposing that New Hampshire has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to CAA section 115 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 New Hampshire 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.*

New Hampshire, through its infrastructure SIP submittal, has documented that its air agency has authority and resources to carry out its SIP obligations. New Hampshire RSA 125-C:6, “Powers and Duties of the Commissioner,” authorizes the Commissioner of the NHDES to enforce the state’s air laws, establish a permit program, accept and administer grants, and exercise incidental powers necessary to carry out the law. Additionally, RSA-125-C:12, “Administrative Requirements,” authorizes the Commissioner to collect fees to recover the costs of reviewing and acting upon permit applications and enforcing the terms of permits issued. The New Hampshire SIP, as originally submitted on January 27, 1972, and subsequently amended, provides additional descriptions of the organizations, staffing, funding and physical resources necessary to carry out the plan.

EPA proposes that New Hampshire 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.

New Hampshire RSA 21-O:11, “Air Resources Council,” established the New Hampshire Air Resources Council, a state board that hears all administrative appeals from department enforcement and permitting decisions. The Council consists of 11 members, 6 of whom “shall represent the public interest.” RSA 21-O:11, I. Those representing the public interest “may not derive any significant portion of their income from persons subject to permits or enforcement orders, and may not serve as attorney for, act as consultant for, serve as officer or director of, or hold any other official or contractual relationship with any person subject to permits or enforcement orders.” *Id.* The statute further provides that “[a]ll potential conflicts of interest shall be adequately disclosed.” *Id.* On December 16, 2015, EPA approved RSA 21-O:11 for incorporation into the New Hampshire SIP as satisfying the requirements of section 128. *See* 80 FR 78135. Additional details are provided in our July 17, 2015 proposal notification. *See* 80 FR 42446.

EPA proposes that New Hampshire 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 established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

New Hampshire Statute Title X, Chapter 125-C:6, “Powers and Duties of the Commissioner,” authorizes the Commissioner of NHDES 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. This authority also enables the Commissioner to correlate this information to any applicable emissions standard and to make such information available to the public.

NHDES implements Chapter Env-A 800, “Testing and Monitoring Procedures,” and Chapter Env-A 900, “Owner or Operator Recordkeeping and Reporting Obligations,” as the primary means of fulfilling these obligations. New Hampshire’s Chapters Env-A 800 and 900 have been approved into the SIP (*See* 77 FR 66388; November 5, 2012). Additionally, under RSA 125-C:6, VII, and Part Env-A 103.04, emissions data are not considered confidential information. EPA recognizes that New Hampshire routinely collects information on air emissions from its industrial sources and makes this information available to the public. New Hampshire states in its submittal that it does not have any provisions that would prevent the use of valid emissions data.

Therefore, EPA proposes that New Hampshire 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.”

We propose to find that New Hampshire’s submittal and certain state statutes provide for authority comparable to that in section 303. New Hampshire’s submittal specifies that RSA 125-C:9, “Authority of the Commissioner in Cases of Emergency,” authorizes the Commissioner of NHDES, with the consent of the Governor and Air Resources Council, to issue an order requiring actions to be taken as the Commissioner deems necessary to address an air pollution emergency. Such orders are effective immediately upon issuance. *Id.* We note also that RSA 125-C:15, I, provides that, “[u]pon a finding by the commissioner that there is an imminent and substantial endangerment to the public health or welfare or the environment, the commissioner shall issue an order of abatement requiring immediate compliance and said order shall be final and enforceable upon issuance, but may be appealed to the council within 30 days of its issuance, and the council may, after hearing, uphold, modify, or abrogate said order.” With regard to the

authority to bring suit, RSA 125-C:15, II, further provides that violation of such an order “shall be subject to enforcement by injunction, including mandatory injunction, issued by the superior court upon application of the attorney general.”

Section 110(a)(2)(G) also requires that New Hampshire have an approved contingency plan 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, 51.152(c). 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. A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. *See* 40 CFR part 51 subpart H.

Classifications for all pollutants for AQCRs in New Hampshire can be found at 40 CFR 52.1521.<sup>10</sup> For ozone, New Hampshire has two AQCRs (Androscoggin Valley Interstate and Central New Hampshire Intrastate) that are classified as Priority III, and one AQCR (Merrimack Valley – Southern New Hampshire Interstate) that is classified as Priority I.

Although a Priority I classification triggers the contingency plan obligation requirement of 40 CFR 51.151, New Hampshire previously requested, pursuant to 40 CFR 51.152(d)(1), an exemption from the contingency plan obligation for the 2008 ozone standard for the Priority I Merrimack Valley – Southern New Hampshire Interstate AQCR because the state is designated as unclassifiable/attainment for that standard. EPA granted this request on December 16, 2015. *See* 80 FR 78135. In its September 5, 2018, infrastructure SIP submission, New Hampshire

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<sup>10</sup> Classification of regions in New Hampshire is available at [https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=5c6639933ef9479b11c7179568ef4b05&mc=true&r=PART&n=pt40.4.52#se40.4.52\\_11521](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=5c6639933ef9479b11c7179568ef4b05&mc=true&r=PART&n=pt40.4.52#se40.4.52_11521) and ozone monitor values for individual monitoring sites throughout New Hampshire are available at [www.epa.gov/outdoor-air-quality-data/monitor-values-report](http://www.epa.gov/outdoor-air-quality-data/monitor-values-report).

requested an exemption from the contingency plan obligation for this AQCR for the 2015 ozone standard because it is also classified as unclassifiable/attainment for this standard. Therefore, we are proposing to grant this request for an exemption. New Hampshire also provided data from eight monitoring sites within this AQCR for the years 2013 to 2017, which indicate that ozone levels during this timeframe are well below the significant harm level for ozone of 0.6 parts per million (ppm) on a 2-hour average. *See* 40 CFR 51.151. In addition, since 2017, all monitors in the state have continued to remain well below the significant harm level for ozone.<sup>11</sup> These data are also below the 0.1 ppm 1-hour maximum established by regulation for classifying an area as Priority I. *See id.* 51.150.

Furthermore, New Hampshire has broad statutory authority (*see* RSA 125– C:9, Authority of the Commissioner in Cases of Emergency) to address activities causing imminent and substantial endangerment to public health. However, New Hampshire does not have regulations that specifically address all the 40 CFR part 51 subpart H requirements. New Hampshire does, however, as a matter of practice, post on the internet daily forecasted ozone levels through the EPA AIRNOW and EPA ENVIROFLASH systems. Information regarding these two systems is available on EPA’s Web site at [www.airnow.gov](http://www.airnow.gov). Notices are sent out to ENVIROFLASH participants when levels are forecast to exceed the current 8-hour ozone standard. In addition, when levels are expected to exceed the ozone standard in New Hampshire, the media are alerted via a press release, and the National Weather Service (NWS) is alerted to issue an Air Quality Advisory through the normal NWS weather alert system. These actions are similar to the notification and communication requirements of 40 CFR 51.152.

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<sup>11</sup> New Hampshire’s 24-hour and annual ozone monitor values for individual monitoring sites are available at <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report>.

EPA proposes that New Hampshire meets the applicable infrastructure SIP requirements for section 110(a)(2)(G), including contingency-plan requirements, 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.

New Hampshire’s infrastructure submittal references New Hampshire RSA 125-C:6, “Powers and Duties of the Commissioner,” which provides that the Commissioner of NHDES may develop a comprehensive program and provide services for the study, prevention, and abatement of air pollution. Additionally, Chapter Env-A 200, “Procedural Rules,” which was approved into the New Hampshire SIP on October 28, 2002 (67 FR 65710), provides for public hearings for SIP revision requests prior to their submittal to EPA. Therefore, EPA proposes that New Hampshire meets the infrastructure SIP requirements of CAA section 110(a)(2)(H) with respect to 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 New Hampshire 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.

New Hampshire RSA 125-C:6, “Powers and Duties of the Commissioner,” authorizes the Commissioner of NHDES to advise, consult, and cooperate with the cities, towns, and other agencies of the state and federal government, interstate agencies, and other groups or agencies in matters relating to air quality. In addition, RSA 125-C:6 enables the Commissioner to coordinate and regulate the air pollution control programs of political subdivisions to plan and implement programs for the control and abatement of air pollution. Furthermore, New Hampshire regulations at Part Env-A 621 direct NHDES to notify town officials, regional planning agencies, and FLMs, among others, of the receipt of certain permit applications and the NHDES

preliminary determination to issue, amend, or deny such permits. EPA proposes that New Hampshire 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 RSA 125-C:6, New Hampshire 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. In addition, the NHDES website includes near real-time air quality data, and a record of historical data. Air quality forecasts are distributed daily via email to interested parties. Air quality alerts are sent by email to a large number of affected parties, including the media. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions and to reduce the public's exposure. Also, Air Quality Data Summaries of the year's air quality monitoring results are issued annually and posted on the NHDES website. New Hampshire is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs.

EPA proposes that New Hampshire 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 New Hampshire'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 air quality 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 Section 110(a)(2)(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.

We are also proposing to correct our December 4, 2018, final action on New Hampshire's infrastructure SIP for the 2012 PM<sub>2.5</sub> NAAQS, which was submitted to EPA on December 22, 2015. *See* 83 FR 62464. That correction entails replacing our previous full approval for this PSD sub-element with a conditional approval based on the state's commitment to submit in a timely manner the necessary revisions to New Hampshire Part Env-A 619.03 needed to fully approve this infrastructure sub-element. This correction is explained in more detail in the discussion of section 110(a)(2)(K) below.

*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. Therefore, we are not proposing action on this sub-element.

**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.

RSA 125-C:6 authorizes the Commissioner of the NHDES to review the potential impact of major sources through modeling. For major sources, NHDES sends modeling data to EPA along with the draft major permit. For non-major sources, Part Env-A 606, Air Pollution Dispersion Modeling Impact Analysis Requirements, specifies the air pollution dispersion modeling impact analysis requirements that apply to owners and operators of certain sources and devices in order to demonstrate compliance with the New Hampshire SIP, RSA 125-C, RSA 125-I, and any rules adopted thereunder. The state also collaborates with the Ozone Transport Commission (OTC) and the Mid-Atlantic Regional Air Management Association and EPA in order to perform large-scale urban air shed modeling for ozone and PM, if necessary.

As noted in our discussion of section 110(a)(2)(C), 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, which EPA revised on January 17, 2017. 82 FR 5182; *see also* 82 FR 14324 (Mar. 20, 2017). New Hampshire's SIP, however, references an earlier version of appendix W. *See* Part Env-A 619.03(a). Therefore, New Hampshire's SIP must be updated to provide for the performance of modeling prescribed by EPA's January 17, 2017, revisions. In a letter dated June 3, 2020, NHDES committed to pursuing revisions to Part Env-A 619.03, *PSD Program Requirements*, that would update the reference to 40 CFR 52.21 in Part Env-A 619.03 so as to incorporate EPA's revisions to appendix W and to submitting these revisions to EPA within one year of our final approval of today's proposed action.<sup>12</sup> With such revision of Env-619.03, New Hampshire's SIP would provide for the performance of such air quality modeling as the EPA Administrator has prescribed, as required by section 110(a)(2)(K) of the Act. Because New Hampshire has committed to submit, but has not yet submitted, necessary revisions to Part Env-A 619.03 that would provide for the performance of such air quality modeling as the EPA Administrator has prescribed, EPA proposes to conditionally approve section 110(a)(2)(K) for the 2015 ozone NAAQS.

For the same reason, we also propose to conditionally approve section 110(a)(2)(K) of New Hampshire's infrastructure SIP for the 2012 PM<sub>2.5</sub> NAAQS, which was submitted on December 22, 2015. EPA previously proposed, but never finalized, full approval of this submission for element K, on April 10, 2018. *See* 83 FR 15343; 83 FR 62464. In today's action, EPA is rescinding its previous proposed full approval for section 110(a)(2)(K) for the 2012 PM<sub>2.5</sub>

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<sup>12</sup> This letter is included in the docket for today's action.

NAAQS<sup>13</sup> and is re-proposing as a conditional approval because, as stated above, New Hampshire's SIP must be updated to provide for the performance of modeling prescribed by EPA's January 17, 2017, revisions, and New Hampshire has committed to making this update. In addition, while EPA never finalized its proposed approval of New Hampshire's submittal for the 2012 PM<sub>2.5</sub> NAAQS for section 110(a)(2)(K), EPA did finalize its approval of the remaining infrastructure requirements for the 2012 PM<sub>2.5</sub> NAAQS on December 4, 2018, including approval of section 110(a)(2)(D)(i)(II), sub-element 2 of 110(a)(2)(C), and sub-element 3 of 110(a)(2)(J). In today's action, EPA is proposing to correct those approvals and to replace them with conditional approvals. EPA's previous approvals for section 110(a)(2)(D)(i)(II), sub-element 2 of 110(a)(2)(C) and sub-element 3 of 110(a)(2)(J) were in error; 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. As explained earlier, New Hampshire's SIP currently references an earlier version of appendix W that has since been superseded. Therefore, New Hampshire's SIP must be updated to refer to an edition of EPA's regulations that incorporates the January 17, 2017, revisions to appendix W. Because the EPA Administrator's approved modeling requirements are found in appendix W, such a 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 New

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<sup>13</sup> EPA received one set of public comments relevant to the April 10, 2018, proposal to approve New Hampshire's 2012 PM<sub>2.5</sub> submission for section 110(a)(2)(K). Because EPA is rescinding that proposal, EPA is not responding to the comments submitted on that proposal. Any person wishing to comment on our action on section 110(a)(2)(K) for the 2012 PM<sub>2.5</sub> standard should submit comments on today's proposal.

Hampshire's submittal for the PSD-related requirements of section 110(a)(2)(D)(i)(II), 110(a)(2)(C), and 110(a)(2)(J) for the 2012 PM<sub>2.5</sub> NAAQS based on the state's commitment to submit in a timely manner the necessary revisions to Part Env-A 619.03.

**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.

New Hampshire implements and operates the Title V permit program, which EPA approved on September 24, 2001. *See* 66 FR 48806. Chapter Env-A 700, Permit Fee System, establishes a fee system requiring the payment of fees to cover the costs of: reviewing and acting upon applications for the issuance of, amendment to, modification to, or renewal of a temporary permit, state permit to operate, or Title V operating permit; implementing and enforcing the terms and conditions of these permits; and developing, implementing, and administering the Title V operating permit program. In addition, Part Env-A 705 establishes the emission-based fee program for Title V and non-Title V sources.

Therefore, EPA proposes that New Hampshire 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. New Hampshire Chapter Env-A 200 and Part Env-A 204 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 revisions to the SIP. Additionally,

RSA 125-C:6, “Powers and Duties of the Commissioner,” authorizes the Commissioner to consult and cooperate with the cities, towns, other agencies of the state and federal government, interstate agencies, and other affected agencies or groups in matters relating to air quality.

EPA proposes that New Hampshire meets the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2015 ozone NAAQS.

### III. Proposed Action

EPA is proposing to approve most of the elements of the infrastructure SIP submitted by New Hampshire on September 5, 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. New Hampshire’s Transport SIP for the 2015 ozone NAAQS will be addressed in a future action.

In addition, EPA is proposing to conditionally approve section 110(a)(2)(K) and the PSD-related elements, which include section 110(a)(2)(D)(i)(II), sub-element 2 of section 110(a)(2)(C), and sub-element 3 of section 110(a)(2)(J) of New Hampshire’s infrastructure SIP for the 2015 ozone NAAQS based on the state’s commitment to submit in a timely manner the necessary revisions to New Hampshire Part Env-A 619.03, *PSD Program Requirements*. 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 New Hampshire’s infrastructure SIP submittal for the 2015 ozone and 2012 PM<sub>2.5</sub> NAAQS

Element	2015 ozone NAAQS	2012 PM <sub>2.5</sub> NAAQS
(A): Emission limits and other control measures	A	PA

(B): Ambient air quality monitoring and data system	A	PA
(C)1: Enforcement of SIP measures	A	PA
(C)2: PSD program for major sources and major modifications	CA	CA
(C)3: Program for minor sources and minor modifications	A	PA
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	No action	PA
(D)2: PSD	CA	CA
(D)3: Visibility Protection	A	PA
(D)4: Interstate Pollution Abatement	A	PA
(D)5: International Pollution Abatement	A	PA
(E)1: Adequate resources	A	PA
(E)2: State boards	A	PA
(E)3: Necessary assurances with respect to local agencies	NA	NA
(F): Stationary source monitoring system	A	PA
(G): Emergency power	A	PA
(H): Future SIP revisions	A	PA
(I): Nonattainment area plan or plan revisions under part D	+	+
(J)1: Consultation with government officials	A	PA
(J)2: Public notification	A	PA
(J)3: PSD	CA	CA
(J)4: Visibility protection	+	+
(K): Air quality modeling and data	CA	CA
(L): Permitting fees	A	PA
(M): Consultation and participation by affected local entities	A	PA

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
PA	Previously Approved

We also propose to conditionally approve section 110(a)(2)(K) of New Hampshire's infrastructure SIP for the 2012 PM<sub>2.5</sub> NAAQS, which was submitted on December 22, 2015. EPA approved all other elements of New Hampshire's infrastructure SIP submittal for the 2012 PM<sub>2.5</sub> NAAQS on December 4, 2018 but, as previously mentioned, never took final action on section 110(a)(2)(K). In addition, we propose to correct that final rule (83 FR 62464) by conditionally approving 110(a)(2)(K) and replacing our approvals of the PSD-related requirements of section 110(a)(2)(D)(i)(II), 110(a)(2)(C), and 110(a)(2)(J) with conditional approvals, based on the state's commitment to submit in a timely manner the necessary revisions to New Hampshire Part Env-A 619.03.

Finally, we are proposing to grant New Hampshire's request, pursuant to 40 CFR 51.152(d)(1), to exempt the state from the contingency plan requirement for the 2015 ozone standard for the Merrimack Valley – Southern New Hampshire Interstate AQCR based on the fact that the state is designated as unclassifiable/attainment for that standard.

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 New Hampshire Part Env-A 619.03 to satisfy 110(a)(2)(K) and the PSD-related requirements of

section 110(a)(2)(D)(i)(II), 110(a)(2)(C), and 110(a)(2)(J) of New Hampshire's infrastructure SIP for the 2012 PM<sub>2.5</sub> and 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 New Hampshire 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 necessary SIP revision. If EPA disapproves the new submittal, the conditionally approved section 110(a)(2)(K) and the PSD-related requirements of section 110(a)(2)(D)(i)(II), 110(a)(2)(C), and 110(a)(2)(J) of New Hampshire's infrastructure SIP for the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS will also be disapproved at that time. If EPA approves the submittal, section 110(a)(2)(K) and the PSD-related requirements of section 110(a)(2)(D)(i)(II), sub-element 2 of 110(a)(2)(C), and sub-element 3 of 110(a)(2)(J) of the state's infrastructure SIP for the 2012 PM<sub>2.5</sub> and 2015 ozone NAAQS will be fully approved in their entirety and will replace the conditionally approved elements 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: July 17, 2020.

Dennis Deziel,  
Regional Administrator,  
EPA Region 1.

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