



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2020-0178; EPA-R01-OAR-2017-0344; FRL- 10015-24-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:** Final rule and correcting amendments.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire that 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). We are also granting the state an exemption from the infrastructure SIP contingency plan obligation for ozone and are conditionally approving several elements of New Hampshire's submittal relating to air-quality modeling requirements. In addition, we are correcting errors in our previous approval of an infrastructure SIP submission from New Hampshire for the 2012 PM<sub>2.5</sub> NAAQS and conditionally approving several elements of that submittal. The infrastructure requirements are designed to ensure that the structural components of each state's air-quality management program, including provisions prohibiting emissions that will have certain adverse air-quality effects in other states, are adequate to meet the state's responsibilities under the CAA. This action is being taken in accordance with the Clean Air Act.

**DATES:** This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2020-0178. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available 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 August 4, 2020, EPA published a Notice of Proposed Rulemaking (NPRM) to approve most elements of a New Hampshire SIP revision addressing 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). This NPRM also proposed to grant the state an exemption from the infrastructure SIP contingency plan obligation for ozone, and to correct errors and conditionally approve several elements in our previous approval of an infrastructure SIP submission from New Hampshire for the 2012 PM<sub>2.5</sub> NAAQS. New Hampshire submitted the formal SIP revision for the 2015 ozone NAAQS on September 5, 2018, and the formal SIP revision for the 2012 PM<sub>2.5</sub> NAAQS on December 22, 2015. The rationale for EPA’s proposed action is given in the NPRM and will not be restated here. EPA received no germane public comments on the NPRM.

## **II. Final Action**

EPA is approving most elements of New Hampshire’s September 5, 2018, infrastructure SIP submission for the 2015 ozone NAAQS—excluding the provisions of the SIP submittal addressing section 110(a)(2)(D)(i)(I) (i.e., the “Good Neighbor” or “transport” provisions)—as a revision to the New Hampshire SIP. We are conditionally approving the SIP submittal for section 110(a)(2)(K) (Air quality modeling and data) and for the PSD-related requirements of sections 110(a)(2)(C), (D)(i)(II), and (J). We are also granting the state an exemption from the infrastructure SIP contingency plan obligation for ozone.

In addition, we are correcting errors and conditionally approving several elements in our previous approval of an infrastructure SIP submitted by New Hampshire on December 22, 2015, for the 2012 PM<sub>2.5</sub> NAAQS. Specifically, we are conditionally approving the 2015 SIP submittal

for section 110(a)(2)(K) and replacing approvals of the 2015 SIP submittal for the PSD-related requirements of sections 110(a)(2)(C), (D)(i)(II), and (J) with conditional approvals.

The State must submit to EPA by October 26, 2021 the revisions to New Hampshire Part Env-A 619.03, *PSD Program Requirements* needed to fully approve the conditionally approved elements of the September 2018 and December 2015 infrastructure SIP submissions.

If the State fails to do so, this approval will become a disapproval on that date. 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 notice in the **Federal Register** notifying the public that the conditional approvals automatically converted to disapprovals. If the State meets its commitment, within the applicable time frame, the conditionally approved submissions 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(s), the conditional approvals of the infrastructure 2015 and 2018 SIP submissions from New Hampshire for the 2015 ozone and 2012 PM<sub>2.5</sub> NAAQS for section 110(a)(2)(K) and the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) will also be disapproved at that time. If EPA approves the submittal(s) for section 110(a)(2)(K) and the revised PSD-related requirements of section 110(a)(2)(D)(i)(II), 110(a)(2)(C), and 110(a)(2)(J), the infrastructure SIP submissions from New Hampshire for the 2015 ozone and 2012 PM<sub>2.5</sub> NAAQS will be fully approved in their entirety and will replace the conditionally approved elements in the SIP.

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 this situation, 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).

### **III. 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 action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: September 24, 2020.

Dennis Deziel,  
Regional Administrator,  
EPA Region 1.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart EE—New Hampshire**

2. In § 52.1520 amend the table in paragraph (e) by:

a. Revising the entry for “Submittals to meet Section 110(a)(2) Infrastructure Requirements for the 2012 PM<sub>2.5</sub> NAAQS,”; and

b. Adding entries for “Submittal to meet Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS,” and “Request for exemption from contingency plan obligation” at the end of the table.

Revision and additions to read as follows:

**§ 52.1520 Identification of plan.**

\* \* \* \* \*

(e) *Nonregulatory.*

**NEW HAMPSHIRE NONREGULATORY**

<b>Name of nonregulatory SIP provision</b>	<b>Applicable geographic or nonattainment area</b>	<b>State submittal date/effective date</b>	<b>EPA approved date</b>	<b>Explanations</b>
**	*	*	*	**
Submittals to meet Section 110(a)(2) Infrastructure Requirements for the 2012 PM <sub>2.5</sub> NAAQS	Statewide	12/22/2015; supplement submitted 6/8/2016	12/4/2018, 83 FR 62464	These submittals are approved with respect to the following CAA requirements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (L), and (M).

		12/22/2015	<b><u>[Insert Federal Register citation]</u></b>	This submittal is conditionally approved with respect to provisions of CAA 110(a)(2)(K). The following previously approved items are corrected and changed from approval to conditional approval: 110(a)(C) (PSD only), (D)(i)(II) (prong 3 only), and (J) (PSD only).
**	*	*	*	**
Submittal to meet Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS	Statewide	9/5/2018	<b><u>[Insert Federal Register citation]</u></b>	This submittal is approved with respect to the following CAA requirements: 110(a)(2)(A), (B), (C) (except PSD), (D)(i)(II) (except prong 3), (D)(ii), (E), (F), (G), (H), (J) (except PSD), (L), and (M), and conditionally approved for the following CAA requirements: 110(a)(2)(K) and (C) (PSD only), (D)(i)(II) (prong 3 only), and (J) (PSD only).
Request for exemption from contingency plan obligation for 2015 ozone NAAQS	Merrimack Valley - Southern New Hampshire AQCR	9/5/2018	<b><u>[Insert Federal Register citation]</u></b>	State's request for exemption from contingency plan obligation, made pursuant to 40 CFR 51.152(d)(1), is granted.

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