

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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 2, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2017-0344; FRL-9976-01-Region 1]

#### Air Plan Approval; New Hampshire; Infrastructure State Implementation Plan Requirements for the 2012 PM<sub>2.5</sub> NAAQS

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of two State Implementation Plan (SIP) submissions from New Hampshire which address the infrastructure and interstate transport requirements of the Clean Air Act (CAA or Act) for the 2012 fine particle (PM<sub>2.5</sub>) 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 May 10, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2017-0344 at [www.regulations.gov](http://www.regulations.gov), or via email to [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov). For comments submitted at [Regulations.gov](http://Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://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 [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets).

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

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

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#### I. Background and Purpose

##### A. What New Hampshire SIP submissions does this rulemaking address?

This rulemaking addresses two submissions from the New Hampshire Department of Environmental Services (NHDES). The state submitted its infrastructure SIP for the 2012 fine particle PM<sub>2.5</sub><sup>1</sup> National Ambient Air Quality Standard (NAAQS) on December 22, 2015. Subsequently, on June 8, 2016, the state submitted a SIP addressing the “Good Neighbor” (or “transport”) provisions for the 2012 PM<sub>2.5</sub> NAAQS (Section 110(a)(2)(D)(i)(I) of the CAA). Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2012 PM<sub>2.5</sub> NAAQS.

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

EPA is acting on two related SIP submissions from New Hampshire that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 PM<sub>2.5</sub> NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA sections 110(a)(1) and 110(a)(2). Pursuant to these sections, each state must submit a SIP that provides for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. States must make such SIP submission “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a new or revised NAAQS.” This requirement is triggered by the promulgation of a new or revised NAAQS and is not conditioned upon EPA's taking any other action. Section

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

110(a)(2) includes the specific elements that “each such plan” must address.

EPA commonly refers to such SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment plan SIP” submissions to address the nonattainment planning requirements of part D of title I of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state’s infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (“SSM” emissions) that may be contrary to the CAA and EPA’s policies addressing such excess emissions; (ii) existing provisions related to “director’s variance” or “director’s discretion” that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (“director’s discretion”); and, (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA’s “Final New Source Review (NSR) Improvement Rule,” 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (“NSR Reform”). Instead, EPA has the authority to address each one of these substantive areas separately. A detailed history, interpretation, and rationale for EPA’s approach to infrastructure SIP requirements can be found in EPA’s May 13, 2014, proposed rule entitled, “Infrastructure SIP Requirements for the 2008 Lead NAAQS” in the section, “What is the scope of this rulemaking?” See 79 FR 27241 at 27242–45.

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

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 guidance). 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 guidance).<sup>2</sup>

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

## III. EPA’s Review

In this notice of proposed rulemaking, EPA is proposing action on two related SIP submissions from the state of New Hampshire. In New Hampshire’s submissions, 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 2012 PM<sub>2.5</sub> NAAQS. The following review evaluates the state’s submissions in light of section 110(a)(2) requirements and relevant EPA guidance.

For New Hampshire’s December 22, 2015 submission addressing the 2012 PM<sub>2.5</sub> NAAQS, we reviewed all Section 110(a)(2) elements, including the transport provisions, but excluding the three areas discussed above under the scope of this rulemaking. For the state’s June 8, 2016, submission, which further addresses the transport provisions with respect to the 2012 PM<sub>2.5</sub> NAAQS, we reviewed infrastructure elements in Section 110(a)(2)(D)(i)(I).

### A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

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

SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.<sup>3</sup> In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state’s SIP has basic structural provisions for the implementation of the NAAQS.

New Hampshire’s Revised Statutes Annotated (RSA) at Chapter 21–O established the New Hampshire Department of Environmental Services (NHDES) and RSA Chapter 125–C provides the Commissioner of NHDES with the authority to develop rules and regulations necessary to meet state and Federal ambient air quality standards. New Hampshire also has SIP-approved emission limits and other measures for specific pollutants. For example, Chapter Env-A 400 “Sulfur content limits in fuels” (57 FR 36603, August 14, 1992); Chapter Env-A 1200 “Volatile Organic Compounds (VOCs) Reasonably Available Control Technology (RACT)” (77 FR 66921, November 8, 2012; 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 2100 “Particulate Matter and Visible Emissions Standards” (81 FR 78052, November 7, 2016); Chapter Env-A 2700 “Particulate Matter emission standards for hot mix asphalt plants” (81 FR 78052, November 7, 2016); and Chapter Env-A 2800 “Emission standards for sand and gravel sources, non-metallic mineral processing plants, cement and concrete sources” (81 FR 78052, November 7, 2016).

EPA proposes that New Hampshire meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2012 PM<sub>2.5</sub> NAAQS. As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director’s discretion in the context of section 110(a)(2)(A).

### B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making

<sup>2</sup> This memorandum and other referenced guidance documents and memoranda are included in the docket for this action.

<sup>3</sup> See, e.g., EPA’s final rule on “National Ambient Air Quality Standards for Lead.” 73 FR 66964, 67034 (November 12, 2008).

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 2017/2018 Annual Network Review and Plan on August 23, 2017.<sup>4</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 December 22, 2015 infrastructure SIP submittal for the 2012 PM<sub>2.5</sub> NAAQS, NHDES referenced EPA's prior approvals of New Hampshire's annual network monitoring plans, as well as RSA Chapter 125-C:6 III, IV and XVI, which provide the Commissioner with "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 NHDES has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

*C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources*

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

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 2012 PM<sub>2.5</sub> NAAQS.

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

PSD applies to new major sources or 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. The EPA interprets the CAA to require 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. NHDES'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).

With respect to current requirements for PM<sub>2.5</sub>, we evaluate New Hampshire's PSD program for consistency with two EPA rules. The first is a final rule issued May 16, 2008, entitled "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" (2008 NSR Rule). See 73 FR 28321. The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM<sub>2.5</sub> and other pollutants that contribute to secondary PM<sub>2.5</sub> formation, including requirements for NSR permits to address pollutants responsible for the secondary formation of PM<sub>2.5</sub>, otherwise known as precursors. As part of identifying precursors to PM<sub>2.5</sub>, the 2008 NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Finally,

the 2008 NSR Rule requires states to account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables for applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits beginning on or after January 1, 2011.<sup>5</sup> These requirements are codified in 40 CFR 51.166(b) and 52.21(b). States were required to revise their SIPs consistent with these changes to the federal regulations.

The second is a final rule issued October 20, 2010, entitled "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (2010 NSR Rule). See 75 FR 64864. This rule established several components for making PSD permitting determinations for PM<sub>2.5</sub>, including adding the required elements for PM<sub>2.5</sub> into a state's existing system of "increment analysis," which is the mechanism used in the PSD permitting program to estimate significant deterioration of ambient air quality for a pollutant in relation to new source construction or modification. The 2010 NSR Rule revised the existing system for determining increment consumption by establishing a new "major source baseline date" for PM<sub>2.5</sub> and by establishing a trigger date for PM<sub>2.5</sub> in relation to the definition of "minor source baseline date." Lastly, the 2010 NSR Rule revised the definition of "baseline area" to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM<sub>2.5</sub>. These requirements are codified in 40 CFR 51.166(b) and (c) and in 40 CFR 52.21(b) and (c). States were required to revise their SIPs consistent with these changes to the federal regulations.

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

<sup>5</sup> On January 4, 2013, the U.S. Court of Appeals for the DC Circuit held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM<sub>10</sub> nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1. *Nat. Res. Def. Council v. EPA*, 706 F.3d 428. The EPA's approval of New Hampshire's infrastructure SIP as to elements C, D(i)(II), or J with respect to the PSD requirements promulgated by the 2008 NSR Rule does not conflict with the court's opinion. For more information, see 80 FR 42446, July 17, 2015).

<sup>4</sup> EPA's approval letter is included in the docket for this action.

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.

Similarly, 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* Env-A 619.03(a). Thus, EPA proposes that New Hampshire's PSD program is consistent with the requirements of the Phase 2 Rule.

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

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of

Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by EPA, the application of the BACT requirement to GHG emissions from Step 1 or "anyway" sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification."

In the **Federal Register** at 80 FR 50199, August 19, 2015, EPA amended its PSD and Title V regulations to remove from the Code of Federal Regulations portions of those regulations that the D.C. Circuit specifically identified as vacated. EPA intends to further revise the PSD and Title V regulations to fully implement the Supreme Court and D.C. Circuit rulings in a separate rulemaking. This future rulemaking will include revisions to additional definitions in the PSD regulations.

Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the additional planned revisions to EPA's PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA's additional actions to revise its PSD program rules in response to the court decisions for purposes of infrastructure SIP submissions. At present, EPA has determined that New Hampshire's SIP is sufficient to satisfy element C with respect to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved New Hampshire PSD

permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy element C. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect EPA's proposed approval of New Hampshire's infrastructure SIP as to the requirements of element C.

For the purposes of the 2012 PM<sub>2.5</sub> NAAQS infrastructure SIP, EPA reiterates that NSR Reform regulations are not in the scope of these actions. Therefore, we are not taking action on existing NSR Reform regulations for New Hampshire.

Therefore, the EPA is proposing to approve New Hampshire's infrastructure SIP for the 2012 PM<sub>2.5</sub> NAAQS with respect to the requirement in section 110(a)(2)(C) to include a PSD permitting program in the SIP that covers the requirements for all regulated NSR pollutants as required by part C of the Act.

#### 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). Since this date, 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 2012 PM<sub>2.5</sub> 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 2012 PM<sub>2.5</sub> NAAQS.

*D. Section 110(a)(2)(D)—Interstate Transport*

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution with which states must comply. It covers the following five topics, categorized as sub-elements: Sub-element 1, Significant contribution to nonattainment, and interference with maintenance of a NAAQS;<sup>6</sup> Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the four prongs discussed below, two of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

Sub-Element 1: Section 110(a)(2)(D)(i)(I)—Contribute to Nonattainment (Prong 1) and Interfere With Maintenance of the NAAQS (Prong 2)

Section 110(a)(2)(D)(i)(I) of the CAA requires a SIP to prohibit any emissions activity in the state that will contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any downwind state. EPA commonly refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the “Good Neighbor” or “transport” provisions of the CAA. This rulemaking proposes action on the portions of New Hampshire’s December 22, 2015 and June 8, 2016, SIP submissions that address the prong 1 and 2 requirements with respect to the 2012 PM<sub>2.5</sub> NAAQS.

EPA has developed a consistent framework for addressing the prong 1 and 2 interstate-transport requirements with respect to the PM<sub>2.5</sub> NAAQS in several previous federal rulemakings. The four basic steps of that framework include: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) identifying which upwind states contribute to these identified

problems in amounts sufficient to warrant further review and analysis; (3) for states identified as contributing to downwind air quality problems, identifying upwind emissions reductions necessary to prevent an upwind state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS downwind; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures. This framework was most recently applied with respect to PM<sub>2.5</sub> in the Cross-State Air Pollution Rule (CSAPR), which addressed both the 1997 and 2006 PM<sub>2.5</sub> standards, as well as the 1997 ozone standard. *See* 76 FR 48208 (August 8, 2011).

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

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

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

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

To develop the projected values presented in the memorandum, EPA used the results of nationwide photochemical air-quality modeling that it recently performed to support several rulemakings related to the ozone NAAQS. Base-year modeling was performed for 2011. Future-year modeling was performed for 2017 to support the proposed CSAPR Update for

<sup>6</sup>For this sub-element *only*, we are evaluating two New Hampshire SIP submittals, the infrastructure SIP for the 2012 PM<sub>2.5</sub> NAAQS submitted on December 22, 2015, and the supplemental Transport SIP for the 2012 PM<sub>2.5</sub> NAAQS submitted on June 8, 2016.

the 2008 Ozone NAAQS. See 80 FR 75705 (December 3, 2015). Future-year modeling was also performed for 2025 to support the Regulatory Impact Assessment of the final 2015 Ozone NAAQS.<sup>7</sup> The outputs from these model runs included hourly concentrations of PM<sub>2.5</sub> that were used in conjunction with measured data to project annual average PM<sub>2.5</sub> design values for 2017 and 2025. Areas that were designated as moderate PM<sub>2.5</sub> nonattainment areas for the 2012 annual PM<sub>2.5</sub> NAAQS in 2014 must attain the NAAQS by December 31, 2021, or as expeditiously as practicable. Although neither the available 2017 nor 2025 future-year modeling data corresponds directly to the future-year attainment deadline for moderate PM<sub>2.5</sub> nonattainment areas, EPA believes that the modeling information is still helpful for identifying potential nonattainment and maintenance receptors in the 2017–2021 period. Assessing downwind PM<sub>2.5</sub> air-quality problems based on estimates of air-quality concentrations in a future year aligned with the relevant attainment deadline is consistent with the instructions from the United States Court of Appeals for the District of Columbia Circuit in *North Carolina v. EPA*, 531 F.3d 896, 911–12 (DC Cir. 2008), that upwind emission reductions should be harmonized, to the extent possible, with the attainment deadlines for downwind areas.

#### New Hampshire's Submissions for Prongs 1 and 2

On December 22, 2015, NH DES submitted an infrastructure SIP for the 2012 PM<sub>2.5</sub> NAAQS, which included transport provisions that addressed prongs 1 and 2 with respect to the 2012 PM<sub>2.5</sub> NAAQS. On June 8, 2016, New Hampshire submitted a supplement to the December 2015 SIP that provides a technical demonstration. The state's supplemental SIP relied in part on EPA's analysis performed for the CSAPR rulemaking to conclude that the state will not significantly contribute to nonattainment or interfere with maintenance of the 2012 PM<sub>2.5</sub> NAAQS in any downwind area.

EPA analyzed the state's December 2015 and June 2016 submittals to determine whether they fully address the prong 1 and 2 transport provisions with respect to the 2012 PM<sub>2.5</sub> NAAQS. As discussed below, EPA concludes that emissions of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors (NO<sub>x</sub> and SO<sub>2</sub>) in New Hampshire will not significantly contribute to nonattainment or interfere with

maintenance of the 2012 PM<sub>2.5</sub> NAAQS in any other state.

#### Analysis of New Hampshire's Submission for the 2012 PM<sub>2.5</sub> NAAQS

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

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

This CSAPR modeling showed that New Hampshire had a very small impact (0.002 µg/m<sup>3</sup>) on the Liberty monitor in Allegheny County, Pennsylvania, which is the only out-of-state monitor that may be a nonattainment or maintenance receptor in 2021. Although EPA has not proposed a particular threshold for evaluating the 2012 PM<sub>2.5</sub> NAAQS, EPA notes that New Hampshire's impact on the Liberty monitor is far below the threshold of 1% for the annual 2012 PM<sub>2.5</sub> NAAQS (*i.e.*, 0.12 µg/m<sup>3</sup>) that EPA previously used to evaluate the contribution of upwind states to downwind air-quality monitors. (A spreadsheet showing CSAPR contributions for ozone and PM<sub>2.5</sub> is included in docket EPA–HQ–OAR–2009–0491–4228.) Therefore, even if the Liberty monitor were considered a receptor for purposes of transport, the EPA proposes to conclude that New Hampshire will not significantly contribute to nonattainment, or interfere with maintenance, of the 2012 PM<sub>2.5</sub> NAAQS at that monitor.

In addition, the Liberty monitor is already close to attaining the 2012 PM<sub>2.5</sub> NAAQS, and expected emissions

reductions in the next four years will lead to additional reductions in measured PM<sub>2.5</sub> concentrations. There are both local and regional components to measured PM<sub>2.5</sub> levels. All monitors in Allegheny County have a regional component, with the Liberty monitor most strongly influenced by local sources. This is confirmed by the fact that annual average measured concentrations at the Liberty monitor have consistently been 2–4 µg/m<sup>3</sup> higher than other monitors in Allegheny County.

Specifically, previous CSAPR modeling showed that regional emissions from upwind states, particularly SO<sub>2</sub> and NO<sub>x</sub> emissions, contribute to PM<sub>2.5</sub> nonattainment at the Liberty monitor. In recent years, large SO<sub>2</sub> and NO<sub>x</sub> reductions from power plants have occurred in Pennsylvania and states upwind from the Greater Pittsburgh region. Pennsylvania's energy sector emissions of SO<sub>2</sub> will have decreased 166,000 tons between 2015–2017 as a result of CSAPR implementation. This is due to both the installation of emissions controls and retirements of electric generating units (EGUs). Projected power plant closures and additional emissions controls in Pennsylvania and upwind states will help further reduce both direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors. Regional emission reductions will continue to occur from current on-the-books federal and state regulations such as the federal on-road and non-road vehicle programs, and various rules for major stationary emissions sources. See proposed approval of the Ohio Infrastructure SIP for the 2012 PM<sub>2.5</sub> NAAQS (82 FR 57689; December 7, 2017).

In addition to regional emissions reductions and plant closures, additional local reductions to both direct PM<sub>2.5</sub> and SO<sub>2</sub> emissions are expected to occur and should contribute to further declines in Allegheny County's PM<sub>2.5</sub> monitor concentrations. For example, significant SO<sub>2</sub> reductions have recently occurred at US Steel's integrated steel mill facilities in southern Allegheny County as part of a 1-hr SO<sub>2</sub> NAAQS SIP.<sup>8</sup> Reductions are largely due to declining sulfur content in the Clairton Coke Work's coke oven gas (COG). Because this COG is burned at US Steel's Clairton Coke Works, Irvin Mill, and Edgar Thompson Steel Mill, these reductions in sulfur content should contribute to much lower PM<sub>2.5</sub> precursor emissions in the immediate future. The Allegheny SO<sub>2</sub> SIP also projects lower SO<sub>2</sub> emissions resulting

<sup>7</sup> See 2015 ozone NAAQS RIA at: <https://www3.epa.gov/ttnecas1/docs/20151001ria.pdf>.

<sup>8</sup> [http://www.achd.net/air/pubs/SIPs/SO2\\_2010\\_NAAQS\\_SIP\\_9-14-2017.pdf](http://www.achd.net/air/pubs/SIPs/SO2_2010_NAAQS_SIP_9-14-2017.pdf).

from vehicle fuel standards, reductions in general emissions due to declining population in the Greater Pittsburgh region, and several shutdowns of significant sources of emissions in Allegheny County.

EPA modeling projections, the recent downward trend in local and upwind emissions reductions, the expected continued downward trend in emissions between 2017 and 2021, and the downward trend in monitored PM<sub>2.5</sub> concentrations all indicate that the Liberty monitor will attain and be able to maintain the 2012 annual PM<sub>2.5</sub> NAAQS by 2021. See proposed approval of the Ohio Infrastructure SIP (82 FR 57689).

As noted in the 2016 memorandum, several states have had recent data-quality issues identified as part of the PM<sub>2.5</sub> designations process. In particular, some ambient PM<sub>2.5</sub> data for certain time periods between 2009 and 2013 in Florida, Illinois, Idaho, Tennessee, and Kentucky did not meet all data-quality requirements under 40 CFR part 50, appendix L. The lack of data means that the relevant areas in those states could potentially be in nonattainment or be maintenance receptors in 2021. However, as mentioned above, EPA's analysis for the 2011 CSAPR rulemaking with respect to the 2006 PM<sub>2.5</sub> NAAQS determined that New Hampshire's impact to all these downwind receptors would be well below the 1% contribution threshold for this NAAQS. That conclusion informs the analysis of New Hampshire's contributions for purposes of the 2012 PM<sub>2.5</sub> NAAQS as well. Given this, and the fact, discussed below, that the state's PM<sub>2.5</sub> design values for all ambient monitors have been well below the 2012 PM<sub>2.5</sub> NAAQS since 2009–2013, EPA concludes that it is highly unlikely that New Hampshire significantly contributes to nonattainment or interferes with maintenance of the 2012 PM<sub>2.5</sub> NAAQS in areas with data-quality issues.<sup>9</sup>

Additional information in New Hampshire's 2016 supplemental SIP submission corroborates EPA's proposed conclusion that New Hampshire's SIPs meets its Good Neighbor obligations. The state's technical analysis in that submission includes 2012–2014 24-hr and annual average PM<sub>2.5</sub> monitoring data for New Hampshire and the contiguous states of Massachusetts, Maine, and Vermont;

projected maximum 2017 and 2025 design values for New Hampshire and contiguous states; as well as meteorology and New Hampshire PM<sub>2.5</sub> control programs. The annual and design values from all monitors in New Hampshire and neighboring states show compliance with the 2012 PM<sub>2.5</sub> NAAQS. This technical analysis is supported by additional indications that, in most areas of the state, air quality is improving and emissions are falling. Specifically, certified annual PM<sub>2.5</sub> monitor values recorded since 2014 show that the highest value in 2015 was 8.7 µg/m<sup>3</sup> at a monitor in Keene, and the highest value in 2016 was 6.7 µg/m<sup>3</sup> at the same monitor in Keene, with many monitors continuing to show declines as indicated by 2017 preliminary results.<sup>10</sup>

Second, New Hampshire's sources are well-controlled. New Hampshire's 2016 submission indicates that the state has many SIP-approved rules and programs that limit emissions of PM<sub>2.5</sub> and the interstate transport of pollution, including Chapter Env-A 300 (Ambient air quality standards), Part Env-A 619 (PSD), Part Env-A 618 (NNSR), Chapter Env-A 2300 (Mitigation of Regional Haze), Chapter Env-A 800 (Testing and monitoring procedures), and Chapter Env-A 900 (Recordkeeping and reporting obligations), as well as delegation for a Title V permitting program.

It should also be noted that New Hampshire is not in the CSAPR program because EPA analyses show that the state does not emit ozone-season NO<sub>x</sub> at a level that contributes significantly to non-attainment or interferes with maintenance of the 1997 and 2006 PM<sub>2.5</sub> NAAQS in any other state.

For the reasons explained herein, EPA agrees with New Hampshire's conclusions and proposes to determine that New Hampshire will not significantly contribute to nonattainment or interfere with maintenance of the 2012 PM<sub>2.5</sub> NAAQS in any other state. Therefore, EPA is proposing to approve the December 2015 and June 2016 infrastructure SIP submissions from New Hampshire addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2012 PM<sub>2.5</sub> NAAQS.

#### Sub-Element 2: Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)

To prevent significant deterioration of air quality, this sub-element requires

SIPs to include provisions that prohibit any source or other type of emissions activity in one state from interfering with measures that are required in any other state's SIP under Part C of the CAA. As explained in the 2013 Guidance, 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, New Hampshire has such a PSD permitting program.

For in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA, prong 3 may be satisfied through an approved NNSR program with respect to any previous NAAQS. EPA approved New Hampshire's NNSR regulations on July 27, 2001 (66 FR 39104). These regulations contain provisions for how the state must treat and control sources in nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR part 51. EPA proposes that New Hampshire has met the requirements with respect to the prohibition of interference with a neighboring state's PSD program for the 2012 PM<sub>2.5</sub> NAAQS related to section 110(a)(2)(D)(i)(II).

#### Sub-Element 3: 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 Guidance, 2011 Guidance, and 2013 Guidance recommend that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. A fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility. New Hampshire's Regional Haze SIP was approved by EPA on August 22, 2012 (77 FR 50602). Accordingly, EPA proposes that New Hampshire has met the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2012 PM<sub>2.5</sub> NAAQS.

<sup>9</sup>New Hampshire's PM<sub>2.5</sub> design values for all ambient monitors from 2004–2006 through 2013–2015 are available on Table 6 of the 2015 Design Value Report at [https://19january2017snapshot.epa.gov/air-trends/air-quality-design-values\\_.html](https://19january2017snapshot.epa.gov/air-trends/air-quality-design-values_.html).

<sup>10</sup>24-hour and annual PM<sub>2.5</sub> monitor values for individual monitoring sites throughout New Hampshire are available at <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report>.

Sub-Element 4: 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 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* Env-A 621.03, .04(e)(3); 82 FR 24057 at 24060; *see also* Env-A 619.07(d). These public notice 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 section 126(a) with respect to the 2012 PM<sub>2.5</sub> NAAQS. New Hampshire 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 2012 PM<sub>2.5</sub> NAAQS.

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

This sub-element requires each SIP to contain provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. There are no final findings under section 115 of the CAA against New Hampshire with respect to the 2012 PM<sub>2.5</sub> NAAQS. Therefore, EPA is proposing that New Hampshire has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 2012 PM<sub>2.5</sub> NAAQS.

*E. Section 110(a)(2)(E)—Adequate Resources*

Section 110(a)(2)(E)(i) requires each SIP to provide necessary 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

with respect to state boards under 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 has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

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

Section 110(a)(2)(E)(ii) requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency

with similar powers be adequately disclosed.

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. New Hampshire's SIP continues to meet the requirements of section 110(a)(2)(E)(ii), and, we propose to approve the infrastructure SIP for the 2012 PM<sub>2.5</sub> NAAQS for this element.

*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 RSA 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 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.

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

#### G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for state authority 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 submittals and certain state statutes provide for authority comparable to that in section 303. New Hampshire’s submittals specify 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 a state to submit for EPA approval a contingency plan (also known as an emergency episode plan) to implement the air agency’s emergency episode authority for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II for certain pollutants. See 40 CFR 51.150. AQCRs classified as Priority III do not require contingency plans. 40 CFR 51.152(c). In general, contingency plans for Priority I, IA, and II areas must meet the applicable requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (“Prevention of Air Pollution Emergency Episodes”) for the relevant NAAQS, if the NAAQS is covered by those regulations. In the case of PM<sub>2.5</sub>, EPA has not promulgated regulations that provide the ambient levels to classify different priority levels for the 2012 standard (or any PM<sub>2.5</sub> NAAQS). For the 2006 PM<sub>2.5</sub> NAAQS, EPA’s 2009 Guidance recommends that states develop emergency episode plans for any area that has monitored and recorded 24-hour PM<sub>2.5</sub> levels greater than 140 µg/m<sup>3</sup> since 2006. EPA’s review of New Hampshire’s certified air quality data in AQS indicates that the highest 24-hour PM<sub>2.5</sub> level recorded since 2006 was 61.5 µg/m<sup>3</sup>, which occurred in 2015 in the city of Keene in Cheshire County. Therefore, EPA proposes that a specific contingency plan from New Hampshire for PM<sub>2.5</sub> is not required. Furthermore, although not expected, if PM<sub>2.5</sub> conditions in New Hampshire were to change, NHDES has general authority to order a source to reduce or discontinue air pollution as required to protect the public health or safety or the environment, as discussed earlier. In addition, as a matter of practice, New Hampshire posts on the internet daily forecasted fine particulate levels through the EPA AIRNOW and EPA ENVIROFLASH systems. Information regarding these two systems is available on EPA’s website at [www.airnow.gov](http://www.airnow.gov). When levels are forecast to exceed the 24-hour fine particulate standard in New Hampshire, notices are sent out to ENVIROFLASH participants, 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.

Therefore, EPA proposes that New Hampshire, through the combination of statutes and regulations discussed above and participation in EPA’s AirNow program, has met the applicable infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires that a state’s SIP provide for revision from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate. New Hampshire RSA 125–C:6, “Powers and Duties of the Commissioner,” 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. EPA proposes that New Hampshire has met the infrastructure SIP requirements of CAA section 110(a)(2)(H) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

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

#### J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; Prevention of Significant Deterioration; Visibility Protection

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. Additionally, 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 NH DES’ preliminary determination to issue, amend, or deny such permits. EPA proposes that New Hampshire has met the infrastructure SIP requirements of section 121 with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### Sub-Element 2: Public Notification

Pursuant to CAA section 127, states must notify the public if NAAQS are exceeded in an area, advise the public of health hazards associated with exceedances, and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

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. New Hampshire is also an active partner in EPA’s AIRNOW and ENVIROFLASH air quality alert programs. EPA proposes that New Hampshire has met the infrastructure SIP requirements of section 127 with respect to the 2012 PM<sub>2.5</sub> 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. Therefore, the SIP also satisfies the PSD sub-element of section 110(a)(2)(J) for the 2012 PM<sub>2.5</sub> 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 guidance, we find that there is no new visibility obligation “triggered” under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2012 PM<sub>2.5</sub> NAAQS.

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

#### K. Section 110(a)(2)(K)—Air Quality Modeling/Data

To satisfy Element K, the state air agency must demonstrate that it has the authority to perform air quality modeling to predict effects on air quality of emissions of any NAAQS pollutant and submission of such data to EPA upon request.

Pursuant to the authority granted to the Commissioner of NHDES in RSA 125–C:6, New Hampshire reviews the potential impact of major sources consistent with 40 CFR part 51, Appendix W, “Guidelines on Air Quality Models.” The modeling data are sent 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), the Mid-Atlantic Regional Air Management Association, and EPA in order to perform large scale urban airshed modeling. Based on the above, EPA proposes that New Hampshire has met the infrastructure SIP requirements

of section 110(a)(2)(K) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### L. Section 110(a)(2)(L)—Permitting Fees

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

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. EPA proposes that New Hampshire has met the infrastructure SIP requirements of section 110(a)(2)(L) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### M. Section 110(a)(2)(M)—Consultation/ Participation by Affected Local Entities

To satisfy Element M, states must provide for consultation with, and participation by, local political subdivisions affected by the SIP. As previously mentioned, Chapter Env-A 200, 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 has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2012 PM<sub>2.5</sub> NAAQS.

#### IV. Proposed Action

EPA is proposing to approve the elements of the infrastructure SIPs submitted by New Hampshire on December 22, 2015 and June 8, 2016, for the 2012 PM<sub>2.5</sub> NAAQS. Specifically, EPA’s proposed action regarding each infrastructure SIP requirement is contained in Table 1 below.

TABLE 1—PROPOSED ACTION ON NEW HAMPSHIRE’S INFRASTRUCTURE SIP SUBMITTAL FOR THE 2012 PM<sub>2.5</sub> NAAQS

Element	2012 PM <sub>2.5</sub>
(A): Emission limits and other control measures .....	A
(B): Ambient air quality monitoring and data system .....	A
(C)1: Enforcement of SIP measures ..	A
(C)2: PSD program for major sources and major modifications .....	A
(C)3: PSD program for minor sources and minor modifications .....	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS .....	A
(D)2: PSD .....	A
(D)3: Visibility Protection .....	A
(D)4: Interstate Pollution Abatement ..	A
(D)5: International Pollution Abatement .....	A
(E)1: Adequate resources .....	A
(E)2: State boards .....	A
(E)3: Necessary assurances with respect to local agencies .....	NA
(F): Stationary source monitoring system .....	A
(G): Emergency power .....	A
(H): Future SIP revisions .....	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 .....	A
(J)4: Visibility protection .....	+
(K): Air quality modeling and data .....	A
(L): Permitting fees .....	A
(M): Consultation and participation by affected local entities .....	A

In the above table, the key is as follows:

A .....	Approve.
NA .....	Not applicable.
+ .....	Not germane to infrastructure SIPs.

EPA is soliciting public comments on the issues discussed in this proposal or

on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

**V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Pub. L. 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: April 2, 2018.  
**Alexandra Dunn**,  
 Regional Administrator, EPA Region 1.  
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