



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2011-0317 and EPA-R01-OAR-2011-0321 (CT); EPA-R01-OAR-2011-0318 and EPA-R01-OAR-2011-0322 (ME); EPA-R01-OAR-2009-0459 and EPA-R01-OAR-2011-0323 (MA); EPA-R01-OAR-2009-0460 and EPA-R01-OAR-2011-0324 (NH); A-1-FRL-9704-2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut, Maine, Massachusetts, New Hampshire; Infrastructure SIPs for the 1997 and 2006 Fine Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve most elements of submittals from the States of Connecticut, Maine, Massachusetts, and New Hampshire. We are also proposing to conditionally approve certain elements of these submittals, as well as disapprove a few elements of Massachusetts' submittals. The submittals outline how each state's State Implementation Plan (SIP) meets the requirements of section 110(a) of the Clean Air Act (CAA) for both the 1997 and 2006 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA. This SIP is commonly referred to as an infrastructure SIP. These actions are 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 EPA-R01-OAR-2011-0317 or EPA-R01-OAR-2011-0321 for comments pertaining to our proposed action for Connecticut,¹ EPA-R01-OAR-2011-0318 or EPA-R01-OAR-2011-0322 for comments pertaining to our proposed action for Maine, EPA-R01-OAR-2009-0459 or EPA-R01-OAR-2011-0323 for comments pertaining to our proposed action for Massachusetts, and EPA-R01-OAR-2009-0460 or EPA-R01-OAR-2011-0324 for comments pertaining to our proposed action for New Hampshire by one of the following methods:

1. www.regulations.gov : Follow the on-line instructions for submitting comments.
2. E-mail: arnold.anne@epa.gov.
3. Fax: (617) 918-0047.
4. Mail: "Docket Identification Number EPA-R01-OAR-2011-0317; EPA-R01-OAR-2011-0321; EPA-R01-OAR-2011-0318; EPA-R01-OAR-2011-0322; EPA-R01-OAR-2009-0459; EPA-R01-OAR-2011-0323; EPA-R01-OAR-2009-0460; or EPA-R01-OAR-2011-0324," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912.
5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

¹ For each State, the first docket number refers to the docket for the 1997 PM_{2.5} infrastructure submittal and the second docket number refers to the docket for the 2006 PM_{2.5} infrastructure submittal.

Instructions: Direct your comments to Docket ID Numbers: EPA-R01-OAR-2011-0317 or EPA-R01-OAR-2011-0321 for comments pertaining to our proposed action for Connecticut, EPA-R01-OAR-2011-0318 or EPA-R01-OAR-2011-0322 for comments pertaining to our proposed action for Maine, EPA-R01-OAR-2009-0459 or EPA-R01-OAR-2011-0323 for comments pertaining to our proposed action for Massachusetts, and EPA-R01-OAR-2009-0460 or EPA-R01-OAR-2011-0324 for comments pertaining to our proposed action for New Hampshire. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. 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 either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person 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 to 4:30, excluding legal holidays.

In addition, copies of the state submittals and EPA's technical support documents are also available for public inspection during normal business hours, by appointment at the respective State Air Agency: the Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630; the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017; Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108; and Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of

Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912, telephone number (617) 918-1684, fax number (617) 918-0684, email simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION:

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

The following outline is provided to aid in locating information in this preamble.

- I. What action is EPA taking?
- II. What is the background for this action?
- III. What is EPA’s Evaluation of the States’ Submittals?
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is proposing action on infrastructure SIPs submitted by the States of Connecticut, Maine, Massachusetts, and New Hampshire. Pursuant to the October 2, 2007 EPA guidance² for addressing the SIP infrastructure elements required under sections 110(a)(1) and (2), there are fourteen section 110(a)(2) components that must be included in the SIPs that the States of Connecticut, Maine, Massachusetts and New Hampshire submitted for the 1997 and 2006 PM_{2.5} NAAQS. These fourteen section 110(a)(2) components are as follows:

(A) Emission limits and other control measures.

(B) Ambient air quality monitoring/data system.

² See “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards” from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, dated October 2, 2007.

- (C) Program for enforcement of control measures.
- (D) Interstate transport.
- (E) Adequate resources.
- (F) Stationary source monitoring system.
- (G) Emergency power.
- (H) Future SIP revisions.
- (I) Nonattainment area plan under Part D
- (J) Consultation with government officials, Public notification, Prevention of significant deterioration (PSD), and Visibility protection.
- (K) Air quality modeling/Data
- (L) Permitting fees.
- (M) Consultation/participation by affected local entities.

EPA is proposing to approve the submittals from all four states as fully meeting the infrastructure requirements for the 1997 and 2006 PM_{2.5} standards for the following 110(a)(2) elements and sub-elements: (B), (C) (enforcement program), (E)(i), (E)(iii), (F), (G), (H), (J) (consultation), (J) (public notification), (K), (L), and (M).

EPA also is proposing to approve the submittals from Maine and New Hampshire as fully meeting the infrastructure requirements for the 1997 and 2006 PM_{2.5} standards for the two prongs of section 110(a)(2)(D)(i)(I). These two prongs are (1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (2) interfere with maintenance by any other state with respect to the same

NAAQS. In addition, EPA is proposing to approve the submittals from Maine for the prong of section 110(a)(2)(D)(i)(II) related to interference with visibility protection, and the submittals from New Hampshire for 110(a)(2)(D)(ii) related to interstate and international pollution abatement.

EPA is proposing to conditionally approve the submittals from all four states for the following 110(a)(2) elements and sub-elements: (A) and E(ii) (state boards and conflict of interest provisions). We are proposing to conditionally approve the submittals from three states (Connecticut, Maine, and New Hampshire) for section 110(a)(2) sub-elements (C), (D)(i)(II), and (J) as they relate to the states' PSD programs. We are also proposing to conditionally approve the submittals from Connecticut and Maine for 110(a)(2)(D)(ii).

For Massachusetts, EPA is proposing to disapprove the state's submittals for section 110(a)(2) sub-elements (C), (D)(i)(II), and (J) as they relate to the state's PSD program, as well as (D)(ii), which relates to interstate and international pollution abatement.

Notwithstanding our conclusion that the Massachusetts' 110(a) submissions do not meet these PSD requirements, the state is already subject to a Federal Implementation Plan (FIP) for PSD, and so EPA has no additional FIP obligations under section 110(c). Furthermore, the state will not be subject to mandatory sanctions as a result of this disapproval.

II. What is the background for this action?

On July 18, 1997, EPA published new NAAQS for particulate matter (PM) (62 FR 38652). This included a new annual and a new 24-hour NAAQS for particles with an

aerodynamic diameter less than or equal to a nominal 2.5 micrometers (denoted PM_{2.5}). The annual PM_{2.5} standard was set at 15 micrograms per cubic meter (µg/m³) based on a 3-year average of annual mean PM_{2.5} concentrations, and the 24-hour PM_{2.5} standard was set at 65 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations.

Thus, states were required to submit “infrastructure” SIPs for the 1997 PM_{2.5} NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 PM_{2.5} (and 1997 8-hour ozone) NAAQS created uncertainty about how to proceed, and many states did not provide the required “infrastructure” SIP submissions for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the infrastructure requirements for the 1997 PM_{2.5} (and 8-hour ozone) NAAQS. With regard to the 1997 PM_{2.5} NAAQS, EPA entered into a consent decree with Earthjustice, which required EPA to complete a Federal Register notice announcing EPA's determinations pursuant to section 110(k)(1)(B) of the Act as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 PM_{2.5} NAAQS by October 5, 2008.

On October 17, 2006, EPA published revised standards for PM (71 FR 61144). For PM_{2.5}, the annual standard of 15 µg/m³ was retained, and the 24-hour standard was revised to 35 µg/m³. For PM₁₀, the annual standard was revoked, and the 24-hour standard (150 µg/m³) was retained. As required by section 110(a)(1) of the CAA, 110(a)(2) (“infrastructure”) submittals

were due within three years of promulgation of the revised 24-hour PM_{2.5} standard (i.e., by September 21, 2009).

For the 1997 annual PM_{2.5} standard, Connecticut, Maine, Massachusetts, and New Hampshire submitted certification letters to EPA on September 4, 2008; September 10, 2008; April 4, 2008; and April 3, 2008, respectively. On October 22, 2008, EPA published findings concerning whether states had made the 110(a)(2) submissions for the 1997 PM_{2.5} standards (73 FR 62902). In the October 2008 action, we found that Connecticut, Maine and New Hampshire had made complete submissions. Massachusetts received a “finding of failure to submit” a SIP addressing section 110(a)(2)(C) and (J) pertaining to the Part C PSD permit program. However, this requirement has already been addressed by a Federal Implementation Plan (FIP) that remains in place, and therefore, the finding-of-failure action did not trigger any additional FIP obligations.

For the 2006 24-hour PM_{2.5} standard, Connecticut, Maine, Massachusetts, and New Hampshire submitted certification letters to EPA on September 18, 2009; July 27, 2009; September 21, 2009; and September 18, 2009, respectively. On September 8, 2011, EPA published findings concerning whether states had made the 110(a)(2) submissions for the 2006 PM_{2.5} standards (76 FR 55577). None of these four states received a finding for the 2006 PM_{2.5} NAAQS.

EPA is proposing to fully approve most elements of the 110(a) submittals from Connecticut, Maine, Massachusetts, and New Hampshire. We are also proposing to conditionally

approve certain elements of these submittals, as well as proposing disapproval of a few elements of Massachusetts' submittals. Elements for which we are proposing approval, conditional approval, and disapproval are listed in section I and IV of this notice.

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

III. What is EPA's Evaluation of the States' Submittals?

EPA has reviewed the submittals for the 1997 and 2006 PM_{2.5} standards listed above and has determined that most, but not all, of each state's SIPs meet the section 110(a)(2) infrastructure requirements of the CAA and are consistent with the relevant EPA guidance. Each state's submittals and EPA's evaluation of those submittals are detailed in the following technical support documents (TSDs). These TSDs (one per state) are available on-line at <http://www.regulations.gov>: Docket numbers EPA-R01-OAR-2011-0317 and EPA-R01-OAR-2011-0321 (Connecticut), EPA-R01-OAR-2011-0318 and EPA-R01-OAR-2011-0322 (Maine), EPA-R01-OAR-2009-0459 and EPA-R01-OAR-2011-0323 (Massachusetts), and EPA-R01-OAR-2009-0460 and EPA-R01-OAR-2011-0324 (New Hampshire).

In their submittals, each state references items in their state laws, statutes, regulations and SIPs that address the elements detailed in section 110(a)(2) of the CAA. Specifically,

Connecticut references the Connecticut Air Quality SIP, the Connecticut General Statutes (CGS) and the Regulations of the Connecticut State Air Agency (RCSA); Maine references the Maine Air Quality SIP, the Code of Maine Regulations (CMR) and the Maine Revised Statutes Annotated (MRSA); Massachusetts references the Massachusetts Air Quality SIP, the Massachusetts General Laws (MGL) and the Code of Massachusetts Regulations (CMR); and New Hampshire references the New Hampshire Air Quality SIP, the New Hampshire Revised Statutes Annotated (RSA) as well as the New Hampshire Rules Governing the Control of Air Pollution, and New Hampshire Administrative Rules Env-A 100 et seq.

The discussion below summarizes how each state meets each relevant CAA infrastructure requirement. As noted above, Connecticut, Maine, Massachusetts, and New Hampshire provided infrastructure submittals for both the 1997 and 2006 PM_{2.5} NAAQS. However, the demonstrations submitted by each State for how it is meeting many of the section 110(a)(2) elements are substantively identical for both of the PM_{2.5} NAAQS. Therefore, unless otherwise noted, the following evaluation of each element pertains to both standards. For more information, please refer to the TSDs referenced above.

A. Emission Limits and Other Control Measures

Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters. The rules approved in the EPA-approved SIPs for Connecticut, Maine, Massachusetts and New Hampshire apply a substantial level of control on PM_{2.5} and PM_{2.5} precursors.

In January 2011, Connecticut revised Section 22a-174-3a. However, to be sure that references to NAAQS in Section 22a-174 incorporate by reference the 1997 and 2006 PM_{2.5} NAAQS, Connecticut submitted a letter to EPA, dated July 11, 2012, committing to provide a statement of legal authority or to take any necessary actions to meet requirements of section 110(a)(2)(A) by a date no later than one year from conditional approval of Connecticut's PM_{2.5} infrastructure submissions. Therefore, we are proposing to conditionally approve Connecticut's submissions for infrastructure element 110(a)(2)(A).

Maine's Ambient Air Quality Standards in Chapter 110 currently do not reflect the 1997 or 2006 PM_{2.5} NAAQS. However, the Maine Department of Environmental Protection (ME DEP) has recently proposed revisions to Chapter 110 to address the more recent NAAQS. On June 30, 2012, Maine submitted a letter to EPA committing to adopt and submit the necessary regulation revisions to EPA by a date that is no later than one year from conditional approval of Maine's PM_{2.5} infrastructure submissions. Therefore, we propose to conditionally approve Maine's 110(a) submissions for infrastructure element 110(a)(2)(A).

Regarding Massachusetts, the current SIP-approved 310 CMR 6.00 (Ambient Air Quality Standards) does not reflect the 1997 or 2006 PM_{2.5} NAAQS. Massachusetts has submitted a letter to EPA on July 12, 2012, committing to take action to meet requirements of section 110(a)(2)(A) by a date no later than one year from conditional approval of Massachusetts' PM_{2.5} infrastructure submissions. Therefore, we are proposing to conditionally approve Massachusetts' 110(a) submissions for infrastructure element 110(a)(2)(A).

For New Hampshire, the current SIP-approved Env-A 300 (Ambient Air Quality Standards) does not reflect the 1997 or 2006 PM_{2.5} NAAQS. However, in March 2012, New Hampshire proposed the necessary revisions to Env-A 300, and has submitted a letter dated June 29, 2012, committing to adopt and submit the necessary regulation revisions to EPA by a date that is no later than one year from conditional approval of New Hampshire's PM_{2.5} infrastructure submissions. We propose to conditionally approve New Hampshire's 110(a) submissions for infrastructure element 110(a)(2)(A).

B. Ambient Air Quality Monitoring/Data System

Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air-quality monitors, collecting and analyzing ambient air-quality data, and making these data available to EPA upon request. Connecticut, Maine, Massachusetts and New Hampshire have all established and currently operate ambient air-quality monitors and submit the data collected to EPA. All four states have submitted annual air monitoring network plans which have been approved by EPA. We conclude that all four states' infrastructure SIPs for the 1997 and 2006 PM_{2.5} NAAQS meet the requirements of section 110(a)(2)(B).

C. Program for Enforcement of Control Measures

Section 110(a)(2)(C) requires states to have a plan that includes a program providing for enforcement of all SIP measures and the regulation of modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a program to meet PSD and nonattainment New Source Review (NSR) requirements.

Recent PM_{2.5} PSD rules that require updates to state regulations and subsequent submittal to EPA for approval include “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})” (73 FR 28321, May 16, 2008) and “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (75 FR 64864, October 20, 2010). States were also required to update their regulations to meet PSD rules related to greenhouse gas (GHG) emissions. These are the “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (75 FR 31514, June 3, 2010), as modified by the “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans” or “Narrowing Rule” (75 FR 82536, December 30, 2010). The effect of EPA narrowing its approval in this manner is that the provisions of previously approved SIPs that apply PSD to increases in GHG emissions from sources that emit GHGs below the Tailoring Rule thresholds have the status of having been submitted by the state, but not yet acted upon by EPA.

In this action, we are not evaluating nonattainment-related provisions, such as the nonattainment NSR program required by part D in 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs for the 1997 and 2006 PM_{2.5} NAAQS because these submittals are required beyond the date (3 years from NAAQS promulgation) that section 110 infrastructure submittals are required.

The Connecticut PSD program is established in RCSA section 22a-174-3a (k). This PSD program was approved into the SIP on May 10, 2011 (76 FR 26933). Connecticut has authority to issue PSD permits and enforce them under its approved PSD SIP. EPA recently approved changes to Connecticut's PSD program on May 10, 2011, to reflect changes in the federal PSD program related to the permitting of greenhouse gas emission (76 FR 26933). This PSD program takes advantage of the Tailoring Rule thresholds for PSD applicability.

New Hampshire's PSD provisions for air-quality permits are established in Env-A 619. The most recent version of the state's Statewide Permit System (Env-A 600) was approved into the New Hampshire SIP on February 6, 2012 (77 FR 5700). New Hampshire has authority to issue PSD permits and enforce them under its approved PSD SIP. EPA recently approved changes to New Hampshire's PSD program that reflect changes in the federal PSD program related to the permitting of greenhouse gas emission (77 FR 5700, February 6, 2012). This PSD program takes advantage of the Tailoring Rule thresholds for PSD applicability by relying on the GHG PSD Narrowing Rule.

For Connecticut and New Hampshire, EPA is proposing to make a determination that the state 110(a) submittals for the 1997 and 2006 PM_{2.5} NAAQS do not meet the portions of section 110(a)(2)(C) which relate to the state's need to have a federally enforceable PSD program that meets requirements of the two major source PM_{2.5} PSD rules, "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})" (73 FR 28321, May 16, 2008), and "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and

Significant Monitoring Concentration (SMC)” (75 FR 64864, October 20, 2010). However, Connecticut and New Hampshire are making progress. On June 15, 2012, Connecticut submitted a letter to EPA committing to adopt and submit the necessary regulation revisions to EPA by a date no later than one year from conditional approval of Connecticut’s PM_{2.5} infrastructure submissions. On June 28, 2012, New Hampshire submitted a letter to EPA committing to adopt and submit the necessary regulation revisions to EPA by a date no later than one year from conditional approval of New Hampshire’s PM_{2.5} infrastructure submissions. Therefore, we propose to conditionally approve Connecticut’s and New Hampshire’s 110(a) submissions for infrastructure element 110(a)(2)(C) as it relates to the states’ need to have a PSD program that meets all federal requirements. As discussed below, for these states, we are also proposing to conditionally approve related elements (D)(i)(II) and (J).

The Maine PSD program is established in CMR (Maine Regulations) Chapters 100, 113, 115 (licensing for minor sources) and 140 (licensing for major sources). Maine implements its PSD program requirements under CMR Chapter 115. This PSD program was approved into the SIP on February 14, 1996 (61 FR 5690). Maine has authority to issue PSD permits and enforce them under its approved PSD SIP. Maine has adopted revisions to its PSD permitting program to address GHG emissions, but has not yet submitted these rules to EPA.

For Maine, EPA is proposing to make a determination that the state 110(a) submittals for the 1997 and 2006 PM_{2.5} NAAQS do not meet the portions of section 110(a)(2)(C) which relate to the state’s need to have a federally enforceable PSD program that meets requirements of the two major source PM_{2.5} PSD rules listed above (73 FR 28321, May 16, 2008 and 75 FR 64864,

October 20, 2010). In addition, Maine's current PSD regulations do not properly account for NO_x as a precursor to ozone as required by the Phase 2 Ozone Implementation Rule (70 FR 71612, November 29, 2005). However, ME DEP is in the process of adopting rules to meet its obligations for PSD under the Phase 2 Ozone Implementation Rule, and, on June 13, 2012, Maine submitted a letter to EPA committing to adopt and submit regulation revisions to EPA to meet requirements of section 110(a)(2)(C) by a date that is no later than one year from conditional approval of the state's PM_{2.5} 110(a) submissions. Therefore, we are proposing to conditionally approve Maine's 110(a) submittals with respect to section 110(a)(2)(C) for the 1997 and 2006 PM_{2.5} NAAQS. As discussed below, we are also proposing to conditionally approve related elements (D)(i)(II) and (J).

Massachusetts does not have an approved PSD SIP, and has long been subject to a Federal Implementation Plan (FIP). Between 1982 and 2003, Massachusetts implemented that FIP through a delegation agreement. Massachusetts rescinded the delegation agreement in 2003. However, effective April 11, 2011, EPA Region 1 granted the Massachusetts Department of Environmental Protection (MassDEP) full delegation authority to implement and enforce the Federal PSD program (76 FR 31241). Because the state is subject to a PSD FIP, its infrastructure submissions are not approvable with respect to this element. However, the state is not subject to mandatory sanctions solely as a result of this type of infrastructure SIP disapproval, for the reason that the SIP deficiencies are neither with respect to a submittal that is required under part D nor in response to a SIP call under section 110(k)(5) of the CAA. Moreover, the requirements for which the state is subject to the FIP are already satisfied by the FIP, and so EPA has no additional FIP obligations under section 110(c).

For these reasons, we conclude that Massachusetts' infrastructure SIPs for the 1997 and 2006 PM_{2.5} NAAQS meet the enforcement and minor NSR requirements, but not the PSD requirements of section 110(a)(2)(C). Therefore, we are proposing to disapprove Massachusetts' 110(a) submittals with respect to section 110(a)(2)(C) for the 1997 and 2006 PM_{2.5} NAAQS. Notwithstanding our conclusion that the Massachusetts' 110(a) submissions do not meet the PSD requirements of section 110(a)(2)(C), the state is not subject to mandatory sanctions as a result of this disapproval. As discussed below, we are also proposing to disapprove related elements (D)(i)(II) and (J).

D. Interstate Transport

Section 110(a)(2)(D) is divided into two components, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). In addition, EPA has subdivided section 110(a)(2)(D)(i) into four "prongs," two under 110(a)(2)(D)(i)(I) and two under 110(a)(2)(D)(i)(II). The two prongs under 110(a)(2)(D)(i)(I) are (prong 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (prong 2) interfere with maintenance by any other state with respect to the same NAAQS. The two prongs under 110(a)(2)(D)(i)(II) are (prong 3) interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality or (prong 4) to protect visibility.

Section 110(a)(2)(D)(ii) addresses interstate and international pollution abatement, and requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

Connecticut

In this action for Connecticut, we are only addressing prong 3 of 110(a)(2)(D)(i) (interference with PSD) for the 2006 PM_{2.5} NAAQS.

As discussed above under (C) (program for enforcement of control measures), Connecticut's PSD program does not yet meet requirements of the most recent federal PSD rules (73 FR 28321, May 16, 2008 and 75 FR 64864, October 20, 2010), but Connecticut has committed to revising its PSD regulations to meet current requirements. Therefore, we are proposing to conditionally approve prong 3 of 110(a)(2)(D)(i) in Connecticut's 110(a) submittal for the 2006 PM_{2.5} NAAQS.

Regarding section 110(a)(2)(D)(ii), Connecticut's PSD regulations provide for notice to most of the parties consistent with the requirements in the EPA PSD program. There is, however, a flaw in Connecticut's SIP-approved PSD program regarding notice to other states. Compare CAA section 126(a)(1) and 40 CFR 51.166(q)(2)(iv) (requiring notice to, among others, "any State ... or Indian Governing body whose lands may be affected by emissions from the source or modification") with RCSA 22a-174-2a(b)(6) (specifically excluding other states from the list of parties to receive copies of draft PSD permits). Although there is no specific mandate in Connecticut's regulations that affected states receive notice, Connecticut issues extensive

notice of its draft permits, and neighboring states consistently get copied on those drafts. On January 12, 2012, Connecticut proposed revisions to their permit program notification requirements in 22a-174-2a(b)(5) and (6). On June 15, 2012, Connecticut sent a letter to EPA committing to submit the adopted provision to EPA by a date that is no later than one year from conditional approval of Connecticut's PM_{2.5} infrastructure submissions. Also, the State also has no pending obligations under section 115 or 126(b) of the Act. Therefore, we are proposing to conditionally approve Connecticut's submissions for infrastructure element 110(a)(2)(D)(ii).

Maine

In this action for Maine, we are addressing all four prongs of 110(a)(2)(D)(i). On June 30, 2012, Maine submitted a letter to EPA certifying that it is not contributing significantly to nonattainment or interfering with maintenance of the 1997 or 2006 PM_{2.5} NAAQS in any other state. EPA agrees and has conducted modeling for the Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12, 2005) and for the Cross State Air Pollution Rule (CSAPR) (76 FR 48208, August 8, 2011) that shows that Maine does not contribute to nonattainment or interfere with maintenance in any other state. Therefore, we are proposing to approve Maine's submissions with respect to prongs 1 and 2 of 110(a)(2)(D)(i).

Regarding prong 3 under section 110(a)(2)(D)(i), as discussed under (C) (program for enforcement of control measures), Maine's SIP-approved PSD program does not yet meet requirements of the most recent federal PSD rules for implementing the PM_{2.5} NAAQS or the Phase 2 Ozone Implementation Rule, but Maine has committed to revising its PSD regulations to

meet current requirements. Therefore, we are proposing to conditionally approve prong 3 of 110(a)(2)(D)(i) in Maine's 110(a) submittals for the 1997 and 2006 PM_{2.5} NAAQS.

Regarding prong 4 under section 110(a)(2)(D)(i) (interference with visibility protection), EPA proposes to approve Maine's 110(a) submissions. Specifically, Maine submitted a Regional Haze SIP to EPA on December 9, 2010, with supplemental submittals on September 14, 2011 and November 9, 2011. On April 24, 2012, EPA approved Maine's Regional Haze SIP for the first planning period from 2008 through 2018 (77 FR 24385).

Regarding section 110(a)(2)(D)(ii), Maine's currently approved SIP, which EPA approved on February 14, 1996 (61 FR 5690), provides for notice to various parties consistent with the requirements in the EPA PSD program at 40 CFR 51.166(q)(iv). (Maine has since revised its notice regulation for PSD permits, and since the approved SIP's notice regulation is adequate, we are not presently reviewing the revised regulation.) In its 110(a) submissions, the state certified that it has no pending obligations under section 115 or 126(b) of the CAA. As noted in the June 2011 addendum to their 110(a) submittals, Maine notifies affected states regarding new source and modifications under its Chapter 140 Part 70 Air Emission License Regulations. However, this regulation has not been approved into the Maine SIP. On June 13, 2012, Maine submitted a letter to EPA committing to adopt and submit the necessary regulation revisions to EPA by a date that is no later than one year from conditional approval of Maine's PM_{2.5} infrastructure submissions. Therefore, we are proposing to conditionally approve Maine's submissions for infrastructure element 110(a)(2)(D)(ii).

Massachusetts

In this action for Massachusetts, we are only addressing prong 3 of 110(a)(2)(D)(i) (i.e., interference with PSD). As discussed under (C) (program for enforcement of control measures), Massachusetts is currently subject to a PSD FIP. A state's infrastructure SIP submittal cannot be considered for approvability with respect to prong 3 until EPA has issued final approval of that state's PSD SIP or, alternatively, has issued final approval of a SIP that EPA has otherwise found adequate to prohibit interference with other states' measures to prevent significant deterioration of air quality. Therefore, we are proposing to disapprove Massachusetts' 110(a) submissions for prong 3 of 110(a)(2)(D)(i). However, this disapproval will not trigger any sanctions or additional FIP obligation.

Regarding section 110(a)(2)(D)(ii), which relates to interstate and international pollution abatement, as noted above, Massachusetts is subject to a PSD FIP. States relying on the federal PSD program requirements of 40 CFR 52.21(q), which provide for notification of affected state and local air agencies, to satisfy this requirement have programs that are considered technically deficient and not approvable. Therefore, we are proposing to disapprove Massachusetts' submissions for infrastructure element 110(a)(2)(D)(ii). However, this disapproval will not trigger any sanctions or additional FIP obligation.

New Hampshire

In this action for New Hampshire, we are addressing prongs 1, 2 and 3 of 110(a)(2)(D)(i) for the 2006 PM_{2.5} NAAQS. On July 3, 2012, New Hampshire submitted a letter to EPA

certifying that it is not contributing significantly to nonattainment or interfering with maintenance of the 1997 or 2006 PM_{2.5} NAAQS in any other state. EPA agrees and has conducted modeling for the Clean Air Interstate Rule (70 FR 25162, May 12, 2005) and for the Cross State Air Pollution Rule (76 FR 48208, August 8, 2011) that shows that New Hampshire does not contribute to nonattainment or interfere with maintenance in any other state. Therefore, we are proposing to approve New Hampshire's submissions with respect to prongs 1 and 2 of 110(a)(2)(D)(i).

Regarding prong 3 under section 110(a)(2)(D)(i), as discussed under (C) (program for enforcement of control measures), New Hampshire's SIP-approved PSD program does not yet meet requirements of the most recent federal PSD rules for implementing the PM_{2.5} NAAQS, but New Hampshire has committed to revising its PSD regulations to meet current requirements. Therefore, we are proposing to conditionally approve prong 3 of 110(a)(2)(D)(i) in New Hampshire's 110(a) submittals for the 1997 and 2006 PM_{2.5} NAAQS.

Regarding section 110(a)(2)(D)(ii), New Hampshire is required to give notice of draft PSD permits that meet the requirements in our regulations. In the currently approved SIP, former Env-A 205.03 provides that New Hampshire specifically defers to 40 CFR Part 52 for the process by which PSD permits are issued. Forty CFR Part 52 effectively incorporates the requirements of 40 CFR Part 124, which include affected state notice. (See 40 CFR 124.10(c)(1)(iii), (vii) & (x).) (New Hampshire has since revised its notice regulation for PSD permits, Env-A 621.03-04, and it does not reference 40 CR Part 52. However, since the approved SIP's notice regulation is adequate, we are not presently reviewing the revised regulation.) The State also has no pending obligations under section 115 or 126(b) of the Act.

Therefore, we are proposing to approve New Hampshire's submissions for infrastructure element 110(a)(2)(D)(ii).

E. Adequate Resources

Section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under section 128, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

Congress added section 128 in the 1977 amendments as the result of a conference agreement. Titled "State boards," section 128 provides in relevant part: (a) Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that:

- (1) Any board or body which approves permits or enforcement orders under [this Act] 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 or enforcement orders under [this Act], and (2) 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.

Connecticut, Maine, Massachusetts and New Hampshire have SIP-approved regulations that provide adequate authority for each of the states to carry out their SIP obligations with respect to the 1997 and 2006 PM_{2.5} NAAQS. Each of the four states receives sections 103 and 105 grant funds through their Performance Partnership Grants along with required state-matching funds to provide funding necessary to carry out their SIP requirements. Therefore, EPA proposes to find that Connecticut, Maine, Massachusetts and New Hampshire have sufficient resources to meet the requirements of section 110(a)(2)(E)(i).

With regard to section 110(a)(2)(E)(ii), Maine and New Hampshire have state boards, Maine Board of Environmental Protection and New Hampshire Air Resources Council, that approve permits or enforcement orders under the CAA. Therefore, both states are subject to the requirements of subsection 128(a)(1), as well as to the requirements of section 128(a)(2). However, although both states have conflict-of-interest provisions in their general statutes, they have not been approved by EPA into either the Maine or New Hampshire SIP. These items were not addressed in Maine and New Hampshire's original PM_{2.5} infrastructure SIP submittals. In a letter dated June 29, 2012, New Hampshire submitted its statute addressing conflict of interest for SIP approval. EPA has not yet acted on this submittal. Also, in a letter dated June 13, 2012, Maine committed to submitting the statutory provisions pertaining to conflict of interest to EPA within one year of our final action on its PM_{2.5} infrastructure SIP. Therefore, we are proposing to conditionally approve the infrastructure submittals for both Maine and New Hampshire with respect to section 110(a)(2)(E)(ii).

Connecticut and Massachusetts do not have state boards that approve permits or enforcement orders under the CAA. Instead, permits and enforcement orders are approved by each state's Commissioner of Environmental Protection. Thus, Connecticut and Massachusetts are not subject to the requirements of subsection 128(a)(1). However, they are subject to the requirements of section 128(a)(2), but neither state demonstrated in their infrastructure submittals that they have meet these requirements. Subsequently, on June 15, 2012, Connecticut submitted a letter to EPA committing to address this issue by a date no later than one year from conditional approval of Connecticut's PM_{2.5} Infrastructure submittals. Massachusetts submitted a similar commitment letter to EPA on July 12, 2012. Therefore, we are proposing to conditionally approve Connecticut's and Massachusetts' submissions with respect to section 110(a)(2)(E)(ii).

With respect to section 110(a)(2)(E)(iii), none of the four states has assigned responsibility for carrying out portions of the SIP to any local government, agency, or other instrumentality. Therefore, the Connecticut, Maine, Massachusetts and New Hampshire 110(a) submittals meet the requirements for this element.

F. Stationary Source Monitoring System

Section 110(a)(2)(F) of the CAA requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. The infrastructure submittals for Connecticut, Maine, Massachusetts and New Hampshire reference specific regulations that require sources to monitor emissions and submit reports to EPA. The specific rules are referenced in the TSD for each state.

EPA has reviewed the laws and regulations that been approved into the Connecticut, Maine, Massachusetts and New Hampshire SIPs and has determined that all four states' infrastructure submittals for the 1997 and 2006 PM_{2.5} standards meet the requirements for section 110(a)(2)(F).

G. Emergency Power

Section 110(a)(2)(G) of the CAA requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

For PM_{2.5}, EPA's guidance dated September 25, 2009³ provides clarification that states that have air quality control regions identified as either Priority I, Priority IA or Priority II by the "Prevention of Air Pollution Emergency Episodes" rules at 40 CFR 51.150 must develop emergency episode contingency plans. The guidance recommends that until EPA establishes significant harm levels (SHL) for PM_{2.5}, states should establish their own SHL levels based on EPA's February 12, 2007 issue paper on setting priority and emergency action levels and also consider the recommended levels set forth in Attachment B of the September 25, 2009 guidance. States would be required to develop emergency episode plans for any area that has monitored and recorded 24-hour PM_{2.5} levels greater than 140.4 µg/m³ since 2006. A state that has never exceeded this level since 2006 is considered to be Priority III in accordance with the guidance, may certify that it has appropriate general emergency powers to address PM_{2.5}-related episodes,

³ See "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS), from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, dated September 25, 2009.

and is not required to adopt specific emergency episode plans at this time, given the existing monitored levels.

Air-quality monitors in all four states show that $\text{PM}_{2.5}$ levels for the past three years are below the $140.5 \mu\text{g}/\text{m}^3$ threshold. Connecticut and Massachusetts certified in their infrastructure submittals that they expect to be classified as Priority III regions and, therefore, emergency episode plans for $\text{PM}_{2.5}$ are not required. Maine and New Hampshire submitted letters to EPA, dated June 13, 2012, and July 3, 2012, respectively, certifying that they expect to be classified as Priority III regions. Therefore, all four states have met the requirements of section 110(a)(2)(G) for both the 1997 and 2006 $\text{PM}_{2.5}$ standards.

H. Future SIP Revisions

Section 110(a)(2)(H) of the CAA requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining NAAQS, or in response to an EPA finding that the SIP is substantially inadequate.

Infrastructure submittals for Connecticut, Maine, Massachusetts and New Hampshire for both the 1997 and 2006 $\text{PM}_{2.5}$ standards certify that SIPs for each state may be revised should EPA find that a plan is substantially inadequate to attain a standard or to comply with any additional requirements under the CAA. Therefore, Connecticut, Maine, Massachusetts and New Hampshire have met the requirements of section 110(a)(2)(H).

I. Nonattainment Area Plan Under Part D

Section 110(a)(2)(I) of the CAA requires that each such plan shall “in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).” EPA is not evaluating nonattainment-related provisions, such as the NSR program required by part D in section 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs because these submittals are required beyond the date (3 years from NAAQS promulgation) that section 110 infrastructure submittals are required.

J. Consultation with Government Official, Public Notification, PSD, and Visibility Protection

Section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to Section 121 relating to consultation. Section 127 requires that the state notify the public of any NAAQS exceedences, advise the public of health hazards associated with such pollution, and include measures to enhance public awareness of measures that can be taken to prevent exceedences.

Section 110(a)(2)(J) also requires states to meet applicable requirements of Part C related to prevention of significant deterioration and visibility protection. EPA interprets this section 110 provision on visibility as not being “triggered” by a new NAAQS because the visibility requirements in part C are not changed by a new NAAQS.

Consultation with government officials

EPA finds that the 110(a) submittals from Connecticut, Maine, Massachusetts and New Hampshire meet the requirements of section 110(a)(2)(J) for consultation with government officials.

Public notification

Connecticut, Maine, Massachusetts and New Hampshire are all state partners participating in EPA's AIRNOW and EnviroFlash Air Quality Alert programs. (See www.airnow.gov.) We are proposing to approve the infrastructure submittals for Connecticut, Maine, Massachusetts and New Hampshire with respect to section 110(a)(2)(J) for public notification.

PSD

Regarding the requirement in section 110(a)(2)(J) that the infrastructure submittals meet the applicable requirements of part C of title I of the CAA, EPA evaluated this requirement in the context of section 110(a)(2)(C) with respect to permitting (see discussion under (C) (program for enforcement of control measures)).

The Connecticut PSD program is established in RCSA section 22a-174-3a (k). This PSD program was approved into the SIP on May 10, 2011 (76 FR 26933). Connecticut has authority to issue PSD permits and enforce them under its approved PSD SIP. EPA recently approved changes to Connecticut's PSD program on May 10, 2011, to reflect changes in the federal PSD program related to the permitting of greenhouse gas emission (76 FR 26933, May 10, 2011). This PSD program takes advantage of the Tailoring Rule thresholds for PSD applicability.

However, as discussed under (C) (program for enforcement of control measures), Connecticut's EPA-approved PSD program does not yet meet requirements of the two major source PM_{2.5} PSD rules (73 FR 28321, May 16, 2008 and 75 FR 64864, October 20, 2010). The State has, however, committed to address this issue. Therefore, we are proposing to conditionally approve the state's 110(a) submittals for the portion of section 110(a)(2)(J) that relates to PSD.

The Maine PSD program is established in CMR (Maine Regulations) Chapters 100, 113, 115 (licensing for minor sources) and 140 (licensing for major sources). Maine implements its PSD program requirements under CMR Chapter 115. This PSD program was approved into the SIP on February 14, 1996 (61 FR 5690). Maine has authority to issue PSD permits and enforce them under its approved PSD SIP. However, as discussed under (C) (program for enforcement of control measures), Maine has adopted revisions to its PSD permitting program to address GHG emissions, but has not yet submitted these rules to EPA. In addition, Maine has not completed rulemaking to meet requirements of the two PM_{2.5} PSD rules (73 FR 28321, May 16, 2008 and 75 FR 64864, October 20, 2010) discussed above, nor of the Phase 2 Ozone Implementation Rule. However, Maine is making progress and, on June 13, 2012, Maine submitted a letter to EPA committing to adopt and submit the necessary regulation revisions to EPA by a date that is no later than one year from conditional approval of Maine's PM_{2.5} infrastructure submissions. Therefore, we are proposing to conditionally approve the state's 110(a) submittals for the portion of section 110(a)(2)(J) that relates to PSD.

Massachusetts is currently subject to a PSD FIP, as discussed under (C) (program for enforcement of control measures). The approvability of a state's PSD program in its entirety is

essential to the approvability of the infrastructure SIP with respect to section 110(a)(2)(J). Until the state provides such a program, the Massachusetts infrastructure SIP is not approvable with respect to section 110(a)(2)(J). Therefore, we propose to disapprove Massachusetts' infrastructure SIP with respect to the PSD sub-element of 110(a)(2)(J). However, as noted above, this disapproval does not impose any sanctions or new FIP obligations.

New Hampshire's PSD provisions for air-quality permits are established in Env-A 619. The most recent version of the state's Statewide Permit System (Env-A 600) was approved into the New Hampshire SIP on February 6, 2012 (77 FR 5700). New Hampshire has authority to issue PSD permits and enforce them under its approved PSD SIP. EPA recently approved changes to New Hampshire's PSD program that reflect changes in the federal PSD program related to the permitting of greenhouse gas emission (77 FR 5700, February 6, 2012). This PSD program takes advantage of the Tailoring Rule thresholds for PSD applicability by relying on the GHG PSD Narrowing Rule. However, as discussed under (C) (program for enforcement of control measures), New Hampshire's EPA-approved PSD program does not yet meet requirements of the two major source PM_{2.5} PSD rules (73 FR 28321, May 16, 2008 and 75 FR 64864, October 20, 2010), or implement the 2006 PM_{2.5} NAAQS itself. The State has, however, committed to address these issues. Therefore, we are proposing to conditionally approve the state's 110(a) submittals for the portion of section 110(a)(2)(J) that relates to PSD.

Visibility protection

With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA.

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, we find that there is no new visibility obligation triggered under section 110(a)(2)(J) when a new NAAQS becomes effective.

K. Air Quality Modeling/Data

Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air-quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request. The infrastructure submittals for Connecticut, Maine, Massachusetts and New Hampshire reference regulations that have provisions for performing air-quality modeling, including modeling for attainment plans, permits, and redesignation requests. The specific rules are referenced in the TSD for each state.

EPA has reviewed the laws and regulations that been approved into the Connecticut, Maine, Massachusetts and New Hampshire SIPs and has determined that all four states infrastructure submittals for the 1997 and 2006 PM_{2.5} standards meet the requirements for section 110(a)(2)(K).

L. Permitting Fees

Section 110(a)(2)(L) of the CAA requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit, until such time as the SIP fee requirement is superseded by EPA's approval of the State's Title V operating permit program.

EPA's full approval of Title V programs for Connecticut, Maine, Massachusetts and New Hampshire became effective on May 31, 2002 (CT), December 17, 2001 (ME), November 27, 2001 (MA), and November 23, 2001 (NH). Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Each of the four states' title V programs included a demonstration that the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). The states collect sufficient fees to administer their title V permit programs. Therefore, Connecticut, Maine, Massachusetts and New Hampshire all meet the requirements for section 110(a)(2)(L) for the 1997 and 2006 PM_{2.5} standards.

M. Consultation/Participation by Affected Local Entities

Section 110(a)(2)(M) of the CAA requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

EPA reviewed the laws and regulations that been approved into the Connecticut, Maine, Massachusetts, and New Hampshire SIPs, and proposes to find that all four states' 110(a) submittals for the 1997 and 2006 PM_{2.5} standards meet the requirements for section 110(a)(2)(M).

IV. Proposed Action

EPA is proposing to approve the submittals from all four states as fully meeting the infrastructure requirements for the 1997 and 2006 PM_{2.5} standards for the following 110(a)(2)

elements and sub-elements: (B), (C) (enforcement program), (E)(i), (E)(iii), (F), (G), (H), (J) (consultation), (J) (public notification), (K), (L), and (M).

EPA also is proposing to approve the submittals from Maine and New Hampshire as fully meeting the infrastructure requirements for the 1997 and 2006 PM_{2.5} standards for the two prongs of section 110(a)(2)(D)(i)(I). These two prongs are (1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (2) interfere with maintenance by any other state with respect to the same NAAQS. In addition, EPA is proposing to approve the submittals from Maine for the prong of section 110(a)(2)(D)(i)(II) related to interference with visibility protection, and the submittals from New Hampshire for 110(a)(2)(D)(ii) related to interstate and international pollution abatement.

EPA is proposing to conditionally approve the submittals from all four states for the following 110(a)(2) elements and sub-elements: (A) and E(ii) (state boards and conflict of interest provisions). We are proposing to conditionally approve the submittals from three states (Connecticut, Maine, and New Hampshire) for section 110(a)(2) sub-elements (C), (D)(i)(II), and (J) as they relate to the states' PSD programs. We are also proposing to conditionally approve the submittals from Connecticut and Maine for 110(a)(2)(D)(ii).

For Massachusetts, EPA is proposing to disapprove the state's submittals for section 110(a)(2) sub-elements (C), prong 3 of (D)(i), and (J) as they relate to the state's PSD program,

as well as (D)(ii), which relates to interstate and international pollution abatement. However, this disapproval will not trigger any sanctions or additional FIP obligation.

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 written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this Federal Register, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions 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 a State to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to complete requirements of each section 110(a)(2) element listed above. If Connecticut, Maine, Massachusetts or New Hampshire fails to do so for any section 110(a)(2) element, our conditional approval of that element will, by operation of law, become a disapproval for the applicable State or States one year from the date of final approval. EPA will notify the State or States by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved SIP for the applicable State or States. EPA subsequently will publish a document in the Federal Register notifying the public that the conditional approval automatically converted to a disapproval. If Connecticut, Maine, Massachusetts and/or New Hampshire meet their commitments within the applicable time frame,

the conditionally approved submission will remain a part of the SIP or SIPs until EPA takes final action approving or disapproving the element in question. If EPA disapproves a State's new submittal, the conditionally approved section 110(a)(2) element will also be disapproved at that time. If EPA approves the submittal, the section 110(a)(2) element will be fully approved in its entirety and replace the conditionally approved 110(a)(2) element in the SIP. Finally, if, based on information received before EPA takes final action on this proposal, EPA determines that it cannot issue a final conditional approval for one or more elements for which EPA has proposed a conditional approval, then EPA will instead issue a disapproval for such elements.

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 Order 12866 (58 FR 51735, October 4, 1993);
- 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: July 16, 2012

Ira W. Leighton,
Acting Regional Administrator,
EPA New England.