



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2015-0198; FRL-9940-14-Region 1]

Approval and Promulgation of Implementation Plans; Connecticut; Infrastructure Requirements for Lead, Ozone, Nitrogen Dioxide, Sulfur Dioxide, and Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) submissions from Connecticut regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2008 lead, 2008 ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide National Ambient Air Quality Standards (NAAQS). EPA is also converting conditional approvals for several infrastructure requirements for the 1997 ozone NAAQS and for the 1997 and 2006 fine particle (PM_{2.5}) NAAQS to full approval under the CAA. Furthermore, we are conditionally approving elements of Connecticut's infrastructure requirements of the CAA regarding prevention of significant deterioration requirements to treat nitrogen oxides as a precursor to ozone and to establish a minor source baseline date for PM_{2.5} emissions. Lastly, EPA is approving three statutes submitted by Connecticut in support of its demonstration that the infrastructure requirements of the CAA have been met. 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.

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

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2015-0198. All documents in the docket are listed on the <http://www.regulations.gov> web site, although some information, such as confidential business information or other information whose disclosure is restricted by statute is not publically available. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <http://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays. Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at: Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Environmental Scientist, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1684; simcox.alison@epa.gov.

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

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

- I. Background and Purpose
- II. Final Action
- III. Statutory and Executive Order Reviews

I. Background and Purpose.

This rulemaking addresses submissions from the Connecticut Department of Energy and Environmental Protection (CT DEEP). The state submitted its infrastructure SIP for each NAAQS on the following dates: 2008 Pb—October 13, 2011; 2008 ozone—December 28, 2012; 2010 NO₂—January 2, 2013; and 2010 SO₂—May 30, 2013. This rulemaking also addresses certain infrastructure SIP elements for the 1997 and 2006 PM_{2.5} NAAQS for which EPA previously issued a conditional approval. See 77 FR 63228 (October 16, 2012). The state submitted these infrastructure SIPs on September 4, 2008, and September 18, 2009, respectively. Lastly, this rulemaking addresses one infrastructure SIP element for the 1997 8-hour ozone NAAQS for which EPA previously issued a conditional approval. See 76 FR 40248 (July 8, 2011). The state submitted this infrastructure SIP on December 28, 2007.

EPA did not receive any comments, adverse or otherwise, in response to the Notice of Proposed Rulemaking (NPR). See 80 FR 54471 (September 10, 2015).

II. Final Action.

EPA is approving SIP submissions from Connecticut certifying that the state's current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and 110(a)(2) for the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, with the exception of certain aspects relating to PSD which we are conditionally approving. A summary of EPA's actions regarding these infrastructure SIP requirements is contained in Table 1 below.

Table 1: Action taken on CT infrastructure SIP submittals for listed NAAQS

Element	2008 Pb	2008 Ozone	2010 NO ₂	2010 SO ₂
(A): Emission limits and other control measures	A	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A	A
(C)(i): Enforcement of SIP measures	A	A	A	A
(C)(ii): PSD program for major sources and major modifications	A*	A*	A*	A*
(C)(iii): Permitting program for minor sources and minor modifications	A	A	A	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2)	A	No action	A	No action
(D)(i)(II): PSD (prong 3)	A*	A*	A*	A*
(D)(i)(II): Visibility Protection (prong 4)	A	A	A	A
(D)(ii): Interstate Pollution Abatement	A	A	A	A
(D)(ii): International Pollution Abatement	A	A	A	A
(E)(i): Adequate resources	A	A	A	A
(E)(ii): State boards	A	A	A	A
(E)(iii): Necessary assurances with respect to local agencies	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A
(G): Emergency power	A	A	A	A
(H): Future SIP revisions	A	A	A	A
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+
(J)(i): Consultation with government officials	A	A	A	A
(J)(ii): Public notification	A	A	A	A

(J)(iii): PSD	A*	A*	A*	A*
(J)(iv): Visibility protection	+	+	+	+
(K): Air quality modeling and data	A	A	A	A
(L): Permitting fees	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A

In the above table, the key is as follows:

A	Approve
A*	Approve, but conditionally approve aspect relating to NO _x as a precursor to ozone and minor source baseline date for PM _{2.5} under the PSD program
+	Not germane to infrastructure SIPs
No action	EPA is taking no action on this infrastructure requirement
NA	Not applicable

With respect to the 1997 and 2006 PM_{2.5} NAAQS, EPA is approving Connecticut's infrastructure SIP submittal requirements pertaining to Elements 110(a)(2)A, D(ii) (interstate pollution abatement), and E(ii) (state boards) for which a conditional approval was previously issued. See 77 FR 63228, October 16, 2012. Also with respect to the 1997 and 2006 PM_{2.5} NAAQS, EPA is newly conditionally approving Connecticut's submittals pertaining to Elements 110(a)(2)C(ii), D(i)(II), and J(iii) for the requirements to treat NO_x as a precursor to ozone and to establish a minor source baseline date for PM_{2.5} in the PSD program.

With respect to the 1997 8-hour ozone NAAQS, EPA is approving Connecticut's infrastructure SIP submittal requirements pertaining to Element 110(a)(2)(D)(ii) (interstate pollution abatement) for which a conditional approval was previously issued. See 77 FR 63228, October 16, 2012.

In addition, we are incorporating into the Connecticut SIP the following Connecticut statutes which were included for approval in Connecticut's infrastructure SIP submittals:

Connecticut General Statutes (CGS) Section 1-85 (Formerly Sec.1-68) "Interest in conflict with discharge of duties," as published in the General Statutes of Connecticut revised to January 1, 2015; amended in Public Act 89-97 in January 1989, effective October 1, 1989;

CGS Section 22a-171 (Formerly Sec. 19-507) "Duties of Commissioner of Energy and Environmental Protection," as published in the General Statutes of Connecticut revised to January 1, 2013; amended in Public Act 84-546 in 1984, effective October 1, 1984;

CGS Section 16a-21a "Sulfur content of home heating oil and off-road diesel fuel. Suspension of requirements for emergency," as published in the General Statutes of Connecticut revised to January 1, 2013, effective July 1, 2011.

As noted in Table 1, EPA is conditionally approving Connecticut's commitment for sub-element sections 110(a)(2)(C)(ii), (D)(i)(II) and (J)(iii) with respect to the 2008 Pb, 2008 ozone, 2010 NO₂, and 2010 SO₂ NAAQS, as well as newly conditionally approving the state's submittals for these sub-elements with respect to the 1997 and 2006 PM_{2.5} NAAQS. In a letter dated August 5, 2015, Connecticut committed to adopt and submit to EPA, one year from the publication of this conditional approval, regulatory revisions to Connecticut's prevention of significant deterioration and new source review permitting requirements that meet the requirements to treat NO_x as a precursor pollutant to ozone and to establish a minor source baseline date for PM_{2.5}.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. By this date, the State must meet its commitment made in its August 5, 2015 letter to submit revisions to its PSD program that fully meet the requirements above. If the State fails to do so, this action will become a disapproval one year from the date of publication of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Connecticut SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval is converted to a disapproval. If the State meets its commitment within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved portions of Connecticut's Infrastructure SIP submittals will also be disapproved at that time. If EPA approves the revised PSD program submittal, then the portions of Connecticut's infrastructure SIP submittals that were conditionally approved will be fully approved in their entirety. In addition, final disapproval of an infrastructure SIP submittal triggers the Federal implementation plan (FIP) requirement under section 110(c).

Other specific requirements of infrastructure SIPs and the rationale for EPA's final action on Connecticut's submittals are explained in the NPR and will not be restated here.

III. Statutory and Executive Order Reviews.

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for

reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 3, 2015.

H. Curtis Spalding,
Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52— APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart H - Connecticut

2. Section 52.370 is amended by adding reserved paragraph (c)(111) and adding paragraph (c)(112) to read as follows:

§ 52.370 Identification of plan

* * * * *

(c) * * *

(111) [Reserved]

(112) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on December 28, 2007; September 4, 2008; September 18, 2009; October 13, 2011; December 28, 2012; January 2, 2013; and May 30, 2013.

(i) [Reserved.]

(ii) Additional materials.

(A) The Connecticut Department of Energy and Environmental Protection document, “Adequacy Determination of the Connecticut State Implementation Plan with Regard to Clean Air Act Section 110(a)(1) and (2) for the 8-Hour Ozone National Ambient Air Quality Standard Program Infrastructure,” Final, December 28, 2007.

- (B) The Connecticut Department of Energy and Environmental Protection document, “Adequacy Determination of the Connecticut State Implementation Plan for Clean Air Act Section 110(a) Infrastructure Elements: 1997 National Ambient Air Quality Standard for Fine Particulate Matter,” Final, September 4, 2008.
- (C) The Connecticut Department of Energy and Environmental Protection document, “Adequacy Determination of the Connecticut State Implementation Plan with Regard to Clean Air Act Section 110(a)(1) and (2) for the 2006 Fine Particulate Matter National Ambient Air Quality Standard,” Final, September 18, 2009.
- (D) The Connecticut Department of Energy and Environmental Protection document, “Request to Withdraw a Portion of Connecticut’s PM_{2.5} Infrastructure Adequacy Determination,” January 7, 2011.
- (E) The Connecticut Department of Energy and Environmental Protection document, “Addendum to the CAA §110(a)(2)(D)(i)(I) Portion of Connecticut's Infrastructure Submittal for the 2006 PM_{2.5} NAAQS,” August 19, 2011.
- (F) The Connecticut Department of Energy and Environmental Protection document, “Adequacy Determination of the Connecticut State Implementation Plan with Regard to Clean Air Act Section 110(a)(1) and (2) for the 2008 Lead National Ambient Air Quality Standard,” Final, October 13, 2011.

- (G) The Connecticut Department of Energy and Environmental Protection document, “Update to Connecticut PM_{2.5} Infrastructure Submittals,” June 15, 2012.
- (H) The Connecticut Department of Energy and Environmental Protection document, “Connecticut State Implementation Plan with Regard to the Infrastructure Requirements of Clean Air Act Section 110(a)(1) and 110(s)(2) for the 2008 Ozone National Ambient Air Quality Standards, Final, December 28, 2012.
- (I) The Connecticut Department of Energy and Environmental Protection document, “Connecticut State Implementation Plan with Regard to the Infrastructure Requirements of Clean Air Act Section 110(a)(1) and 110(a)(2) for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards, Final, January 2, 2013.
- (J) The Connecticut Department of Energy and Environmental Protection document, “Connecticut State Implementation Plan for Clean Air Act Section 110(a) Infrastructure Elements: 2010 Sulfur Dioxide National Ambient Air Quality Standard, Final, May 30, 2013.
- (K) The Connecticut Department of Energy and Environmental Protection letter, “Supplement to Infrastructure State Implementation Plan (SIP) Revisions,” August 5, 2015.

3. Section 52.380 is amended by adding paragraphs (f), (g), and (h) to read as follows:

§ 52.380 Rules and regulations.

* * * * *

Note 1 to paragraphs (f) through (h): “state” means the state of Connecticut.

(f) *Connecticut General Statutes Section 1-85. (Formerly Sec. 1-68). Interest in conflict with discharge of duties:* A public official, including an elected state official, or state employee has an interest which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state, if he has reason to believe or expect that he, his spouse, a dependent child, or a business with which he is associated will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. A public official, including an elected state official, or state employee does not have an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to him, his spouse, a dependent child, or a business with which he, his spouse or such dependent child is associated as a member of a profession, occupation or group to no greater extent than any other member of such profession, occupation or group. A public official, including an elected state official or state employee who has a substantial conflict may not take official action on the matter.

(g) *Connecticut General Statutes Section 22a-171. (Formerly Sec. 19-507). Duties of Commissioner of Energy and Environmental Protection:* The Commissioner of Energy and Environmental Protection of the State of Connecticut shall:

- (1) Initiate and supervise programs for the purposes of determining the causes, effect and hazards of air pollution;
- (2) Initiate and supervise state-wide programs of air pollution control education;
- (3) Cooperate with and receive money from the Federal Government and, with the approval of the Governor, from any other public or private source;

(4) Adopt, amend, repeal and enforce regulations as provided in Connecticut General Statutes Section 22a-174 and do any other act necessary to enforce the provisions of Connecticut General Statutes Chapter 446c and Connecticut General Statutes Section 14-164c;

(5) Advise and consult with agencies of the United States, agencies of the state, political subdivisions and industries and any other affected groups in furtherance of the purposes of Connecticut General Statutes Chapter 446c.

(h) *Connecticut General Statutes Section 16a-21a. Sulfur content of home heating oil and off-road diesel fuel. Suspension of requirements for emergency.* (1)(i) The amount of sulfur content of the following fuels sold, offered for sale, distributed or used in this state shall not exceed the following percentages by weight:

(A) For number two heating oil, three-tenths of one per cent; and

(B) For number two off-road diesel fuel, three-tenths of one per cent.

(ii) Notwithstanding paragraph (h)(1)(i) of this section, the amount of sulfur content of number two heating oil sold, offered for sale, distributed or used in this state shall not exceed the following percentages by weight:

(A) For the period beginning July 1, 2011, and ending June 30, 2014, fifty parts per million; and

(B) On and after July 1, 2014, fifteen parts per million.

(iii) The provisions of paragraph (h)(1)(ii) of this section shall not take effect until the states of New York, Massachusetts and Rhode Island each have adopted requirements that are substantially similar to the provisions of said paragraph (h)(1)(ii).

(2) As of the date on which the last of the states of New York, Massachusetts and Rhode Island limits the sulfur content of number two heating oil to one thousand five hundred parts per million, the sulfur content of number two heating oil sold, offered for sale,

distributed or used in this state shall not exceed one thousand five hundred parts per million.

(3) As of the date on which the last of the states of New York, Massachusetts and Rhode Island limits the sulfur content of number two heating oil to one thousand two hundred fifty parts per million, the sulfur content of number two heating oil sold, offered for sale, distributed or used in this state shall not exceed one thousand two hundred fifty parts per million.

(4) As of the date on which the last of the states of New York, Massachusetts and Rhode Island limits the sulfur content of number two heating oil to five hundred parts per million, the sulfur content of number two heating oil sold, offered for sale, distributed or used in this state shall not exceed five hundred parts per million.

(5) As of the date on which the last of the states of New York, Massachusetts and Rhode Island limits the sulfur content of number two off-road diesel fuel to five hundred parts per million, the sulfur content of number two off-road diesel fuel offered for sale, distributed or used in this state shall not exceed five hundred parts per million.

(6) The Commissioner of Energy and Environmental Protection of the State of Connecticut may suspend the requirements of subsections (a) to (e), inclusive, of this Connecticut General Statutes Section 16a-21a if the commissioner finds that the physical availability of fuel which complies with such requirements is inadequate to meet the needs of residential, commercial or industrial users in this state and that such inadequate physical availability constitutes an emergency provided the commissioner shall specify in writing the period of time such suspension shall be in effect.

Note 2 to paragraph (h): EPA has replaced the original structure of the CT statute with the structure of the CFR and uses “paragraph” instead of the original statutory language of

“subsection” and “subdivision.” EPA has also replaced the (a)-level of the original statute with the (1)-level in the CFR and the (1)-level in the original statute with the (i)-level in the CFR.

4. In § 52.385, Table 52.385 is amended by adding an entry for Section 1-85, revising the entry for Section 16a-21a, and adding new an entry for Section 22a-171 to read as follows:

§ 52.385 - EPA-approved Connecticut regulations.

* * * * *

Table 52.385 - EPA-Approved Regulations

Connecticut State citation	Title/ subject	Dates		Federal Register citation	Section 52.370	Comments/ description
		Date adopted by State	Date approved by EPA			
*	*	*	*	*	*	*
<i>Connecticut General Statutes</i> Section 1-85	Interest in conflict with discharge of duties.	October 1, 1989	[Insert Federal Register date of publication date]	[Insert Federal Register citation]	c (112)	Criteria for identifying a conflict of interest.
<i>Connecticut General Statutes</i> Section 16a-21a	Sulfur content of home heating oil and off road diesel fuel. Suspension of requirements for emergency.	July 8, 2013	[Insert Federal Register date of publication date]	[Insert Federal Register citation]	c (112)	Allowable sulfur content of fuels provided. Criteria for suspension of requirements identified.
<i>Connecticut General Statutes</i> Section 22a-171	Duties of Commissioner of Energy and Environmental Protection.	October 1, 1984	[Insert Federal Register date of publication date]	[Insert Federal Register citation]	c (112)	Obligations and activities of the Commissioner identified.

5. Add § 52.386 to read as follows:

§ 52.386 Section 110(a)(2) infrastructure requirements.

The Connecticut Department of Energy and Environmental Protection submitted the following infrastructure SIPs on these dates: 2008 Pb NAAQS—October 13, 2011; 2008 ozone NAAQS—December 28, 2012; 2010 NO₂ NAAQS—January 2, 2013; and 2010 SO₂ NAAQS—

May 30, 2013. These infrastructure SIPs are approved, with the exception of certain elements within 110(a)(2)(C)(ii), D(i)(II), and J(iii), which are conditionally approved. Connecticut submitted infrastructure SIPs for the 1997 and 2006 PM_{2.5} NAAQS on September 4, 2008, and September 18, 2009, respectively, and elements 110(a)(2)(A), D(ii), and E(ii), which were previously conditionally approved, are now approved. Also with respect to the 1997 and 2006 PM_{2.5} NAAQS, elements related to PSD, which include 110(a)(2)C(ii), D(i)(II), and J(iii) are newly conditionally approved. Connecticut also submitted an Infrastructure SIP for the 1997 8-hour ozone NAAQS on December 28, 2007, and element 110(a)(2)(D)(ii), which was previously conditionally approved, is now approved.

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