



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R01-OAR-2019-0695; FRL-10005-36-Region 1]**

**Air Plan Approval; Massachusetts; Infrastructure State Implementation Plan Requirements for the 2015 Ozone Standard**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. Except as noted, this revision satisfies the infrastructure requirements of the Clean Air Act (CAA) for the 2015 ozone 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. We are issuing a finding of failure to submit pertaining to the various aspects of infrastructure SIPs relating to the prevention of significant deterioration (PSD). The Commonwealth has long been subject to a Federal Implementation Plan (FIP) regarding PSD, thus the finding of failure to submit will result in no sanctions or further FIP requirements. We do not in this action address CAA 110(a)(2)(D)(i)(I) requirements regarding interstate transport, because we previously approved the Commonwealth's submittal addressing these requirements for the 2015 ozone standard (January 31, 2020). This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule will be effective **[Insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a

timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2019-0695 at <https://www.regulations.gov>, or via email to [rackauskas.eric@epa.gov](mailto:rackauskas.eric@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S.

Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. 617-918-1628, email [rackauskas.eric@epa.gov](mailto:rackauskas.eric@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

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

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### **I. Background and Purpose**

On September 27, 2018, the Massachusetts Department of Environmental Protection (DEP) submitted a formal revision to its State Implementation Plan (SIP). The SIP revision contains the Commonwealth’s “Certification of Adequacy of the Massachusetts State Implementation Plan Regarding Clean Air Act Sections 110(a)(1) and (2) for the 2015 Ozone National Ambient Air Quality Standards.” When EPA promulgates a new or revised NAAQS, states must submit these certifications (or infrastructure SIPs) to ensure that their SIP provides for implementation, maintenance, and enforcement of the respective NAAQS.

EPA previously approved Massachusetts’ infrastructure SIP for the 2008 ozone standard (as part of a notice approving five total NAAQS infrastructure SIPs) on December 21, 2016 (81 FR 93627). The September 27, 2018 submission contains virtually the same information as the previous SIP approved version, with a few minor updates and date changes. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.<sup>1</sup> Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state’s SIP for compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.<sup>2</sup> The EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

#### **B. What guidance is EPA using to evaluate Massachusetts’ infrastructure SIP submission?**

EPA highlighted the statutory requirement to submit infrastructure SIPs within 3 years of promulgation of a new NAAQS in an October 2, 2007, guidance document entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” (2007 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).

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<sup>1</sup> EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including EPA’s prior action on Massachusetts’ infrastructure SIP to address the 1997 ozone, 2008 lead, 2008 ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS. 81 FR 93627 (December 21, 2016).

<sup>2</sup> See *Montana Env’tl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

## II. Infrastructure SIP Evaluation

The following review evaluates the state's submissions regarding CAA section 110(a)(2) requirements and relevant EPA guidance.

### A. Section 110(a)(2)(A) – Emission limits and other control measures.

This section 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. Massachusetts General Law (M.G.L.) c. 21A, section 8, *Executive Office of Energy and Environmental Affairs Organization of Departments; powers, duties and functions*, creates and sets forth the powers and duties of the Department of Environmental Protection (MassDEP) within the Executive Office of Energy and Environmental Affairs. In addition, M.G.L. c. 111, sections 142A through 142N, which, collectively, are referred to as the *Massachusetts Pollution Control Laws*, provide MassDEP with broad authority to prevent pollution or contamination of the atmosphere and to prescribe and establish appropriate regulations. Furthermore, M.G.L. c. 21A, section 18, *Permit applications and compliance assurance fees; timeline action schedules; regulations*, authorizes MassDEP to establish fees applicable to the regulatory programs it administers.

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<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).

MassDEP has adopted numerous regulations within the Code of Massachusetts Regulations (CMR) in furtherance of the objectives set out by these statutes, including 310 CMR 4.00, *Timely Action & Fee Schedule Regulations*, 310 CMR 6.00, *Ambient Air Quality Standards for the Commonwealth of Massachusetts*, and 310 CMR 7.00, *Air Pollution Control Regulations*. For example, many SIP-approved State air quality regulations within 310 CMR 7.00 provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters that satisfy the requirements of the CAA section 110(a)(2)(A) for the 2015 ozone NAAQS, including but not limited to 7.18, *Volatile and Halogenated Organic Compounds*, 7.19, *Reasonably Available Control Technology (RACT) for Sources of NO<sub>x</sub>*, and 7.29, *Emission Standards for Power Plants*. EPA finds that MassDEP meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2015 ozone NAAQS.

**B. Section 110(a)(2)(B) – Ambient air quality monitoring/data system.**

This section requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze ambient air quality data, and make these data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA’s review of these annual monitoring plans includes our evaluation of whether the State: (i) Monitors air quality at appropriate locations throughout the State using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA’s Air Quality System (AQS) in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.” Under MGL c. 111, sections 142B to 142D, MassDEP operates an air monitoring network. EPA approved the state’s most recent Annual Air Monitoring Network Plan on November 25, 2019. In addition to having an adequate air monitoring network, MassDEP populates 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. EPA finds that MassDEP has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2015 ozone 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) permitting program for minor sources and minor modifications.

**i. Sub-element 1: Enforcement of SIP measures**

MassDEP staffs and implements an enforcement program pursuant to authorities provided within the following laws: M.G.L. c. 111, section 2C, *Pollution violations; orders of department of environmental protection*, which authorizes MassDEP to issue orders enforcing pollution control regulations generally; M.G.L. c. 111, sections 142A through 142O, *Massachusetts Air Pollution Control Laws*, which, among other things, more specifically authorize MassDEP to adopt regulations to control air pollution, enforce such regulations, and issue penalties for non-compliance; and, M.G.L. c. 21A, section 16, *Civil Administrative Penalties*, which provides additional authorizations for MassDEP to assess penalties for failure to comply with the Commonwealth’s air pollution control laws and regulations. Moreover, SIP-approved regulations,

such as 310 CMR 7.02(12)(e) and (f), provide a program for the enforcement of SIP measures. Accordingly, EPA finds that Massachusetts has met this requirement of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

ii. Sub-element 2: Preconstruction program for major sources and major modifications

Sub-element 2 of section 110(a)(2)(C) requires that states provide for the regulation of modification and construction of any stationary source as necessary to assure that the NAAQS are achieved, including a program to meet PSD and NNSR requirements. 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 regarding, the relevant NAAQS, and NNSR requires similar actions in nonattainment areas.

As MassDEP recognizes in the submittal, Massachusetts does not have an approved state PSD program and has long been subject to a Federal Implementation Plan (FIP). The Commonwealth implements and enforces the federal PSD program through a delegation agreement. *See* 76 FR 31241 (May 31, 2011). Accordingly, EPA is issuing a finding of failure to submit with respect to the PSD-related requirements of this sub-element for the 2015 ozone NAAQS. This finding will not trigger any additional FIP obligation by the EPA, because the deficiency is addressed by the FIP already in place. Nor is the Commonwealth subject to mandatory sanctions solely as a result of this finding because the SIP submittal deficiencies are neither with respect to a sub-element that is required under part D nor in response to a SIP call under section 110(k)(5) of the Act.

iii. 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 regulates emissions of the relevant NAAQS pollutants. EPA's most recent approval of the Commonwealth's minor NSR program occurred on April 5, 1995. 60 FR 17226. Since this date, Massachusetts 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 2015 ozone NAAQS.

In summary, EPA finds that Massachusetts meets the enforcement-related aspects of Section 110(a)(2)(C) discussed above within sub-element 1, and the preconstruction permitting requirements for minor sources discussed in sub-element 3, for the 2015 ozone NAAQS. As to preconstruction PSD permitting of major sources and major modifications, EPA finds that the Commonwealth has failed to make the required submission.

#### **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; 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.

- i. 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. EPA has previously approved Massachusetts’ Good Neighbor SIP for the 2015 ozone NAAQS.<sup>4</sup> 85 FR 5772 (January 31, 2020). Therefore, Massachusetts has already met this requirement for the 2015 ozone NAAQS.

- ii. 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. One way for a State to meet this requirement, specifically with respect to in-State sources and pollutants that are subject to PSD permitting, is through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA’s PSD implementation rules. For in-State sources not subject to PSD, this requirement can be satisfied through a fully-approved nonattainment new source review (NNSR) program with respect to any previous NAAQS.

As discussed under element C above and as noted in the submittal, Massachusetts has long been subject to a PSD FIP and has implemented and enforced the federal PSD program through a delegation agreement with EPA. Accordingly, EPA makes a finding of failure to submit with respect to the PSD requirement of this sub-element for the 2015 ozone NAAQS. This finding

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<sup>4</sup> EPA is not reopening for comment determinations made in that action.

does not trigger any sanctions or additional FIP obligation for the same reasons discussed under element C above.

Under prong 3 of 110(a)(2)(D)(i)(II), EPA also reviews the potential for in-State sources not subject to PSD to interfere with PSD in an attainment or unclassifiable area of another State. EPA generally considers a fully approved NNSR program adequate for purposes of meeting this requirement of prong 3 with respect to in-state sources and pollutants not subject to PSD. *See* 2013 guidance. EPA last approved the Commonwealth's NNSR program on May 29, 2019. 84 FR 24719. Accordingly, we approve Massachusetts' submittal for the 2015 ozone NAAQS for the NNSR aspect of prong 3.

iii. Sub-Element 3: Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)

Regarding the 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 2013 guidance explains 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. On September 19, 2013, EPA approved Massachusetts' Regional Haze SIP as meeting the requirements of 40 CFR 51.308. *See* 78 FR 57487. Accordingly, EPA finds that Massachusetts meets the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS.

iv. Sub-Element 4: Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement

This sub-element requires that each SIP 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.

As mentioned elsewhere in this document, Massachusetts does not have a SIP-approved PSD program and is currently subject to a PSD FIP, which includes a requirement to notify any State whose lands may be affected by emissions from the Massachusetts PSD source. *See* 40 CFR 52.21(q), 124.10(c)(1)(vii); *see also id.* section 52.1165. While we find that the Commonwealth failed to make a submittal for the 2015 ozone NAAQS for section 110(a)(2)(D)(ii) with respect to the PSD-related notice of interstate pollution, such finding does not trigger any additional FIP obligation by the EPA under section 110(c)(1), because the federal PSD rules address the notification issue. Nor does the finding trigger any sanctions. Finally, Massachusetts has no obligations under any other provision of section 126.

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

This sub-element also requires each SIP to contain provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. Section 115 authorizes the Administrator to require a state to revise its SIP to alleviate international transport into another country where the Administrator has made a finding with respect to emissions of the particular NAAQS pollutant and its precursors, if applicable. There are no final findings under section 115 against Massachusetts for the 2015 ozone NAAQS. Therefore, EPA finds that Massachusetts meets the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 2015 ozone NAAQS.

**E. Section 110(a)(2)(E) – Adequate resources**

Section 110(a)(2)(E)(i) requires each SIP to provide assurances that the State will have adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Additionally, Section 110(a)(2)(E)(ii) requires each state to comply with the requirements with respect to state boards under 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 adequate implementation of SIP obligations with respect to relevant NAAQS. This last sub-element, however, is not applicable to this action, because Massachusetts does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

i. Sub-element 1: Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues

Massachusetts, through its infrastructure SIP submittals, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. Massachusetts General Laws c. 111, sections 142A to 142N, provide MassDEP with the authority to carry out the state's implementation plan. The Massachusetts SIP, as originally submitted in 1971 and subsequently amended, provides descriptions of the staffing and funding necessary to carry out the plan. In the submittals, MassDEP provides assurances that it has adequate personnel and funding to carry out the SIP during the five years following infrastructure SIP submission and in future years. Additionally, the Commonwealth receives CAA section 103 and 105 grant funds through Performance Partnership agreements and provides state matching funds, which together enable Massachusetts to carry out its SIP requirements. EPA finds that Massachusetts meets the infrastructure SIP requirements of section 110(a)(2)(E)(i) for the 2015 ozone NAAQS.

ii. Sub-element 2: State board requirements under section 128 of the CAA

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128(a) 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.

Massachusetts does not have a state board that approves permits or enforcement orders under the CAA. Instead, permits and enforcement orders are approved by the Commissioner of MassDEP. Thus, Massachusetts is not subject to the requirements of paragraph (a)(1) of section 128. As to the conflict of interest provisions of section 128(a)(2), Massachusetts has cited to M.G.L. c. 268A of the Commonwealth's Conflict of Interest law in its infrastructure SIP submittal for the 2015 ozone NAAQS. EPA previously approved M.G.L. c. 268A, sections 6 and 6A, into the SIP in satisfaction of this infrastructure SIP requirement. 81 FR 93627 (December 21, 2016). Pursuant to these state provisions, state employees in Massachusetts, including the head of an executive agency with authority to approve air permits or enforcement orders, are required to disclose potential conflicts of interest to, among others, the state ethics commission. EPA finds that the Massachusetts SIP satisfies the requirements of section 110(a)(2)(E)(ii) of the Clean Air Act for the 2015 ozone NAAQS.

#### **F. Section 110(a)(2)(F) – Stationary source monitoring system**

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require

periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Pursuant to M.G.L. c. 111, sections 142A to 142D, MassDEP has the necessary authority to maintain and operate air monitoring stations and coordinates with EPA in determining the types and locations of ambient air monitors across the state. The Commonwealth uses this authority to require the installation, maintenance, and replacement of emissions monitoring equipment by, and to collect information on air emissions from, sources in the state. Additionally, Massachusetts statutes and regulations provide that emissions data shall be available for public inspection. *See, e.g.,* M.G.L. c. 21I, section 20(K), M.G.L. c. 111, section 142B; 310 CMR section 3.33(5), 7.12(4)(b); 7.14(1). The following SIP-approved regulations enable the accomplishment of the Commonwealth's emissions recording, reporting, and correlating objectives:

1. 310 CMR 7.12, Source Registration.
2. 310 CMR 7.13, Stack Testing.
3. 310 CMR 7.14, Monitoring Devices and Reports.

EPA recognizes that Massachusetts routinely collects information on air emissions from its industrial sources and makes this information available to the public. EPA therefore finds that the Commonwealth meets the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2015 ozone NAAQS.

#### **G. Section 110(a)(2)(G) – Emergency powers**

This section requires that a plan provide for authority analogous to that provided 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 find that the Commonwealth’s ISIP submittal demonstrates that a combination of state statutes and regulations provide for authority comparable to that in section 303.

Massachusetts’ submittal cites M.G.L. C. 111, section 2B, *Air Pollution Emergencies*, which authorizes the Commissioner of the MassDEP to “declare an air pollution emergency” if the Commissioner “determines that the condition or impending condition of the atmosphere in the Commonwealth . . . constitutes a present or reasonably imminent danger to health.” During such an air pollution emergency, the Commissioner is authorized pursuant to section 2B, to “take whatever action is necessary to maintain and protect the public health, including but not limited to . . . prohibiting, restricting and conditioning emissions of dangerous or potentially dangerous air contaminants from whatever source derived...” Additionally, sections 2B and 2C authorize the Commissioner to issue emergency orders.

Moreover, M.G.L. c. 21A, section 8 provides that, “[i]n regulating . . . any pollution prevention, control or abatement plan [or] strategy . . . through any . . . departmental action affecting or prohibiting the emission . . . of any hazardous substance to the environment . . . the department may consider the potential effects of such plans [and] strategies . . . on public health and safety and the environment . . . and said department shall act to minimize and prevent damage or threat of damage to the environment.”

These duties are implemented, in part, under MassDEP regulations at 310 CMR 8.00, *Prevention and Abatement of Air Pollution Episodes and Air Pollution Incident Emergencies*, the most recent revisions to which EPA approved into the SIP on March 4, 2019. 84 FR 7299. These

regulations establish levels that would constitute significant harm or imminent and substantial endangerment to health for ambient concentrations of pollutants subject to a NAAQS, consistent with the significant harm levels and procedures for state emergency episode plans established by EPA in 40 CFR Part 51.150 and 51.151. Finally, M.G.L. c. 111, section 2B authorizes the state to seek injunctive relief in the superior court for violation of an emergency order issued by the MassDEP Commissioner. While no single Massachusetts statute or regulation mirrors the authorities of CAA section 303, we find that the combination of state statutes and regulations discussed herein provide for comparable authority to immediately bring suit to restrain, and issue orders against, any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment.

Section 110(a)(2)(G) also requires that, for any NAAQS, States have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. *See* 40 CFR 51.152(c). Two AQCRs in Massachusetts are classified as Priority I for ozone, with the remaining AQCRs classified as Priority III for ozone. *Id.* 52.1121. As noted above, EPA approved 310 CMR 8.00 into the SIP to satisfy the contingency plan requirements of CAA section 110(a)(2)(G) for a previous infrastructure SIP submittal for the 2008 ozone NAAQS. 84 FR 7299. This state regulation satisfies the applicable requirements for contingency plans at 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (*Prevention of Air Pollution Emergency Episodes*). For the above reasons, EPA finds that Massachusetts meets the infrastructure SIP requirements of CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

#### **H. Section 110(a)(2)(H) – Future SIP revisions**

This section requires that a state's SIP provide for revision 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. Massachusetts General Laws

c. 111, section 142D provides in relevant part that, “From time to time the department shall review the ambient air quality standards and plans for implementation, maintenance and attainment of such standards adopted pursuant to this section and, after public hearings, shall amend such standards and implementation plan so as to minimize the economic cost of such standards and plan for implementation, provided, however, that such standards shall not be less than the minimum federal standards.” This authorizing statute gives MassDEP the power to revise the Massachusetts SIP 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. Accordingly, EPA finds that Massachusetts meets the infrastructure SIP requirements of CAA section 110(a)(2)(H) for the 2015 ozone 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; PSD; 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 Massachusetts with respect to these requirements is described below.

i. Sub-element 1: Consultation with government officials

Section 121 of the Act requires states to provide a process for consultation with local governments and Federal Land Managers (FLMs) in carrying out NAAQS implementation requirements.

Pursuant to EPA-approved Massachusetts regulations at 310 CMR 7.02(12)(g)(2), MassDEP notifies the public “by advertisement in a newspaper having wide circulation” in the area of the particular facility of the opportunity to comment on certain proposed permitting actions and sends “a copy of the notice of public comment to the applicant, the EPA, and officials and agencies having jurisdiction over the community in which the facility is located, including local air pollution control agencies, chief executives of said community, and any regional land use planning agency.” In addition, Massachusetts Executive Order 145, “Consultation with Cities & Towns on Administrative Mandates,” which EPA approved into the SIP on June 24, 2019, establishes a process for agencies of the Commonwealth to consult with local governments. 84 FR 29380. In its submittal, Massachusetts lists additional authorities and processes on which it relies to provide for consultation with local governments when carrying out requirements of the CAA. MassDEP notes that, with respect to the requirement to consult with FLMs, it relies in part on the FLM consultation requirement contained in the PSD FIP to meet this obligation. As previously mentioned, Massachusetts does not have an approved state PSD program, but rather is subject to a PSD FIP, which, as MassDEP notes, includes a provision requiring consultation with FLMs. See 40 CFR 52.21(p). Consequently, with respect to the 2015 ozone NAAQS, EPA finds that Massachusetts has met the consultation with local governments requirement of this portion of section 110(a)(2)(J) but issues a finding of failure to submit with respect to the FLM consultation requirement for PSD permitting. Because the federal PSD program, which Massachusetts implements and enforces,

addresses this FLM consultation requirement, a finding of failure to submit does not result in sanctions or new FIP obligations.

ii. Sub-element 2: Public notification

Section 127 of the Act requires states to: 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.

Massachusetts regulations specify criteria for air pollution episodes and incidents and provide for notice to the public via news media and other means of communication. *See* 310 CMR 8.00. The Commonwealth also provides a daily air quality forecast to inform the public about concentrations of fine particles and, during the ozone season, provides similar information for ozone. Real time air quality data for NAAQS pollutants are also available on the MassDEP's website, as are information about health hazards associated with NAAQS pollutants and ways in which the public can participate in regulatory efforts related to air quality. The Commonwealth is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs, which notify the public of air quality levels through EPA's website, alerts, and press releases. In light of the above, we find that Massachusetts meets the infrastructure SIP requirements of this requirement of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

iii. Sub-element 3: PSD

Pursuant to Section 110(a)(2)(J), States must also meet applicable requirements of Part C of the Act (relating to PSD). The Commonwealth's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing sections 110(a)(2)(C), (D)(i)(II), and (D)(ii), and our actions for those sections are consistent with the proposed action for this portion of

section 110(a)(2)(J). Specifically, we are making a finding of failure to submit with respect to the PSD sub-element of section 110(a)(2)(J) for the 2015 ozone NAAQS and note that such a finding does not result in any sanctions or new FIP obligations.

iv. 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, 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 SIP for the 2015 Ozone NAAQS.

**K. Section 110(a)(2)(K) – Air quality modeling/data**

Section 110(a)(2)(K) of the Act requires that a SIP provide for the performance of such air-quality modeling as the EPA Administrator may prescribe to predict the effect on ambient air quality of any emissions of any air pollutant for which EPA has established a NAAQS, and the submission, upon request, of data related to such air quality modeling. EPA has published modeling guidelines at 40 CFR part 51, Appendix W, for predicting the effects of emissions of criteria pollutants on ambient air quality. EPA recommends in the 2013 guidance that, to meet section 110(a)(2)(K), a State submit or reference the statutory or regulatory provisions that provide the air agency with the authority to conduct such air quality modeling and to provide such modeling data to EPA upon request.

Massachusetts state law implicitly authorizes MassDEP to perform air quality modeling and provide such modeling data to EPA upon request. See M.G.L. c. 21A, section 2(2), (10), (22); M.G.L. c. 111, sections 142B–142D. In addition, 310 CMR 7.02 authorizes MassDEP to require air

dispersion modeling analyses from certain sources and permit applicants. Massachusetts implements and enforces the federal PSD program through a delegation agreement (included in the docket for today's action) that requires MassDEP to follow the applicable procedures in EPA's permitting regulations at 40 CFR 52.21, as amended from time to time. The Commonwealth also collaborates with the Ozone Transport Commission (OTC), the Mid-Atlantic Regional Air Management Association, and EPA to perform large scale urban airshed modeling. EPA finds that Massachusetts meets the infrastructure SIP requirements of section 110(a)(2)(K) for the 2015 ozone 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. Massachusetts implements and operates the Title V permit program, which EPA approved on September 28, 2001. *See* 66 FR 49541. To gain approval, Massachusetts demonstrated, among other things, that it collects fees sufficient to cover the costs of reviewing and acting on Title V permit applications and implementing and enforcing the permits. *See* 61 FR 3827 (February 2, 1996); 40 CFR 70.9. Section 18 of M.G.L. c. 21A authorizes MassDEP to promulgate regulations establishing fees. To collect fees from sources of air emissions, the MassDEP promulgated and implements 310 CMR 4.00, *Timely Action Schedule and Fee Provisions*. These regulations set permit application and compliance fees for existing major sources and for new and modified major sources. EPA proposes that the Commonwealth meets the infrastructure SIP requirements of section 110(a)(2)(L) for the 2015 ozone NAAQS.

#### **M. Section 110(a)(2)(M) – Consultation/participation by affected local entities**

To satisfy element M, states must provide for consultation with, and allow participation by, local political subdivisions affected by the SIP. Pursuant to M.G.L. c. 111, section 142D, MassDEP must hold public hearings prior to revising its SIP. In addition, M.G.L. c. 30A, Massachusetts Administrative Procedures Act, requires MassDEP to provide notice and the opportunity for public comment and hearing prior to adoption of any regulation. Moreover, the Commonwealth's Executive Order No. 145 (discussed earlier in the context of element J) requires state agencies, including MassDEP, to provide notice to the Local Government Advisory Committee to solicit input on the impact of proposed regulations and other administrative actions on local governments. MassDEP's submittal also notes that the agency consults with local political subdivisions through a state "SIP Steering Committee" and conducts stakeholder outreach with local entities as a matter of policy when revising the SIP or adopting air regulations. Therefore, EPA proposes that Massachusetts meets the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2015 ozone NAAQS.

### **III. Final Action**

EPA is approving most portions of the Massachusetts infrastructure SIP requirements for the 2015 ozone NAAQS. We are also issuing a finding of failure to submit pertaining to the various aspects of infrastructure SIPs relating to the prevention of significant deterioration (PSD). The Commonwealth has long been subject to a Federal Implementation Plan (FIP) regarding PSD, thus the finding of failure to submit will result in no mandatory sanctions or further FIP requirements. This rulemaking also does not include any action on the interstate transport portion of the Commonwealth's submittal. This action is being taken in accordance with the Clean Air Act.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve

as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective **[Insert date 60 days after date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days after date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days after date of publication in the Federal Register]** and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **IV. Statutory and Executive Order Reviews**

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

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

- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on

tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **Insert date 60 days after date of publication in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this issue of the **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 11, 2020.

Dennis Deziel,  
Regional Administrator,  
EPA Region 1.

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 W - Massachusetts**

2. In § 52.1120, in paragraph (e), amend the table by adding an entry for “Infrastructure SIP for 2015 Ozone NAAQS” at the end of the table to read as follows:

#### **§ 52.1120 Identification of plan**

\* \* \* \* \*

(e) \* \* \*

#### **Massachusetts Non Regulatory**

| <b>Name of non regulatory SIP provision</b>       | <b>Applicable geographic or nonattainment area</b> | <b>State submittal date/effective date</b> | <b>EPA approved date<sup>3</sup></b>                                                                         | <b>Explanations</b>                                                                                                                                                                                     |
|---------------------------------------------------|----------------------------------------------------|--------------------------------------------|--------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>**</b>                                         | <b>*</b>                                           | <b>*</b>                                   | <b>*</b>                                                                                                     | <b>**</b>                                                                                                                                                                                               |
| Infrastructure SIP submittal for 2015 Ozone NAAQS | Statewide                                          | September 27, 2018                         | <b>[Insert date of publication in the Federal Register]</b><br><br><b>[Insert Federal Register citation]</b> | Approved with respect to requirements for CAA section 110(a)(2) (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M) with the exception of the PSD-related requirements of (C), (D), and (J). |

<sup>3</sup> To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2020-05350 Filed: 3/12/2020 8:45 am; Publication Date: 3/13/2020]