

approve these portions of the SIP revisions.

### III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Louisville Metro Air Pollution Control District Regulation 6.21, *Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals*, Version 3, and Regulation 7.20, *Standard of Performance for New Gasoline Loading Facilities at Bulk Plants*, Version 3, state-effective June 19, 2019, with the exception of the phrase “or an alternate procedure approved by the District” in Regulation 6.21, subsection 3.6.4.2 and Regulation 7.20, subsection 3.11.1.2. The changes to these rules replace a requirement for gasoline tank trucks to possess valid pressure vacuum test sticker with a requirement for specific vapor tightness testing and recordkeeping procedures, clarify rule applicability, and remove language stating that a pressure measuring device will be supplied by the District. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### IV. Proposed Action

EPA is proposing to approve the revisions to the Jefferson County portion of the Kentucky SIP (Regulation 6.21, *Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals*, Version 3, and Regulation 7.20, *Standard of Performance for New Gasoline Loading Facilities at Bulk Plants*, Version 3), submitted on September 5, 2019, as discussed above.

### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 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 CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted 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 1955 (Pub. L. 104–4);

- Does not have Federalism implications as specified in the 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 CAA; 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). The SIP is not approved to apply on any Indian reservation land or 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

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

Dated: December 11, 2020.

**Mary Walker,**

*Regional Administrator, Region 4.*

[FR Doc. 2021–00533 Filed 1–21–21; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R01–OAR–2020–0327; FRL–10018–02–Region 1]

### Air Plan Approval; Maine; Infrastructure State Implementation Plan Requirements for the 2015 Ozone Standard and Negative Declaration for the Oil and Gas Industry for the 2008 and 2015 Ozone Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision addresses the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). Today's proposed action includes all elements of these infrastructure requirements except for the “Good Neighbor” or “transport” provisions, which will be addressed in a future action. 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.

EPA is also proposing to approve State of Maine submittals of amendments to Chapter 110, Ambient Air Quality Standards, and of statutory conflict-of-interest provisions in 38 Maine Revised Statutes Annotated (MRSA) Section 341–A and 341–C. These two submittals support the state's infrastructure submittal for the 2015 ozone NAAQS.

In addition, we are proposing to convert previous conditional approvals of the sub-element of section 110(a)(2)(E) that addresses State Board Requirements in Maine's infrastructure SIPs for the 2008 ozone; 2008 lead (Pb); 2010 nitrogen dioxide (NO<sub>2</sub>); 2010 sulfur dioxide (SO<sub>2</sub>); 1997, 2006, and 2012 fine particle (PM<sub>2.5</sub>) NAAQS to full approvals. We are also proposing to convert to full approval previous conditional approvals of section 110(a)(2)(A) (Emission limits and other control measures) in Maine's

infrastructure SIPs for the 1997 and 2006 PM<sub>2.5</sub>.

Finally, EPA is proposing to approve SIP revisions submitted by Maine that provide the state's determination, via a negative declaration for the 2008 and 2015 ozone standards, that there are no facilities within its borders subject to EPA's 2016 Control Technique Guideline (CTG) for the oil and gas industry.

This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before February 22, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2020-0327 at <https://www.regulations.gov>, or via email to [simcox.alison@epa.gov](mailto:simcox.alison@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 and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency,

EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. (617) 918-1684, email [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

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

##### *Maine's Infrastructure SIP for the 2015 ozone standard.*

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).<sup>1</sup> Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIPs meeting the applicable

<sup>1</sup> National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

requirements of section 110(a)(2).<sup>2</sup> On February 14, 2020, the Maine Department of Environmental Protection (Maine DEP) submitted a revision to the Maine State Implementation Plan (SIP). The SIP revision addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS.

##### *Maine's Negative declaration for the Oil and Natural Gas Industry for the 2008 and 2015 ozone standards.*

On October 27, 2016, EPA published in the **Federal Register** the “Final Control Techniques Guidelines for the Oil and Natural Gas Industry.” See 81 FR 74798. The CTG provided information to state, local, and tribal air agencies to assist them in determining reasonably available control technology (RACT) for volatile organic compound (VOC) emissions from select oil and natural gas industry emission sources. CAA section 182(b)(2)(A) requires that, for ozone nonattainment areas classified as Moderate or above, states must revise their SIPs to include provisions to implement RACT for each category of VOC sources covered by a CTG document. CAA section 184(b)(1)(B) extends the RACT obligation to all areas of states within the Ozone Transport Region (OTR). Pursuant to CAA section 184(a), Maine is a member state of the OTR. States subject to RACT requirements are required to adopt controls that are at least as stringent as those found in the CTG either by adopting regulations or issuing single-source Orders or Permits that outline what the source is required to do to meet RACT. If no source for a specified CTG exists in a state, the state must submit, as a SIP revision, a negative declaration documenting this fact. On May 18, 2020, Maine DEP submitted for approval into the Maine SIP, a negative declaration for the 2016 CTG for the Oil and Natural Gas Industry for the 2008 and 2015 ozone standards.

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

EPA is proposing to approve SIP revisions submitted by Maine on February 14, 2020, addressing the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS, except the transport provisions which will be addressed in a future action. Additionally, we are proposing to approve a regulation (ambient air quality standards) submitted by Maine on May 28, 2019, and a statute (conflict-

<sup>2</sup> SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under 110(a)(2) are referred to as infrastructure requirements.

of-interest provisions) submitted by Maine on September 4, 2019, which support the infrastructure SIP submittal. Finally, EPA is proposing to approve a SIP revision submitted by Maine on May 18, 2020, that provides the state's determination, via a negative declaration, that there are no facilities within its borders subject to EPA's 2016 CTG for the oil and gas industry for the 2008 and 2015 ozone standards.

Regarding the 2015 ozone infrastructure SIP submission, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make "infrastructure SIP submissions" to provide for the implementation, maintenance, and enforcement of the NAAQS. 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>3</sup> Unless otherwise noted below, we are following that 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>4</sup> 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 did EPA use to evaluate Maine's infrastructure SIP for the 2015 ozone standard?*

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

memorandum).<sup>5</sup> 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 memorandum).

#### **II. EPA's Evaluation of Maine's Infrastructure SIP for the 2015 Ozone Standard**

Maine's February 14, 2020, submission includes a detailed list of Maine Laws and SIP-approved Air Quality Regulations that show precisely how each component of its EPA-approved SIP meets the requirements of section 110(a)(2) of the CAA for the 2015 ozone NAAQS. The following review evaluates the state's submission in light of section 110(a)(2) requirements and relevant EPA guidance. For Maine's February 2020 infrastructure submission, we provide an evaluation of the applicable Section 110(a)(2) elements, excluding the transport provisions.

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

This section (also referred to in today's action as an element) of the Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.<sup>6</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.

In its February 2020 submittal for the 2015 ozone NAAQS, Maine cites state laws and regulations in satisfaction of element A. Maine DEP statutory authority with respect to air quality is set out in 38 MRSA Chapter 4, "Protection and Improvement of Air." Legislative authority giving DEP general authority to promulgate regulations is codified at 38 MRSA Chapter 2, Subchapter 1: "Organization and Powers." Statutory authority to establish emission standards and regulations implementing ambient air quality

standards is contained in 38 MRSA Chapter 4, sections 585 and 585-A.

Under element A of its February 14, 2020, infrastructure SIP submittal for the 2015 ozone NAAQS, the Maine DEP cites over 30 state regulations that it has adopted to control emissions related to ozone and the ozone precursors, nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs). Some of these, with their EPA approval citation,<sup>7</sup> are listed here: 06–096 Code of Maine Regulations (CMR) Chapter 111 Petroleum Liquid Storage Vapor Control (79 FR 65587; November 5, 2014); Chapter 115 Emission License Regulations (81 FR 50353; August 1, 2016); Chapter 127 New Motor Vehicle Emission Standards (70 FR 21959; April 28, 2005); Chapter 129 Surface Coating facilities 77 FR 30216; May 22, 2012); Chapter 134 Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds (65 FR 20749; April 18, 2000); Chapter 138 Reasonably Available Control Technology for Facilities that Emit Nitrogen Oxides (67 FR 57148; September 9, 2002); and Chapter 145 NO<sub>x</sub> Control Program (70 FR 11879; March 10, 2005).

On May 22, 2019, Maine submitted a SIP revision containing Maine's updated Chapter 110, "Ambient Air Quality Standards," which was previously approved by EPA on June 24, 2014. *See* 79 FR 35695. The updates to Chapter 110 incorporate the current NAAQS for ozone and PM<sub>2.5</sub>, and update and align the rules governing the Maine ambient air quality standards to provide consistency with the federal NAAQS. Therefore, EPA is proposing to approve updated Chapter 110 into the SIP. Consequently, we are also proposing to convert to full approval previous conditional approvals of section 110(a)(2)(A) for Maine's infrastructure SIPs for the 1997 and 2006 PM<sub>2.5</sub> NAAQS (October 16, 2012; 77 FR 63228).

EPA proposes that Maine meets the infrastructure requirements of section 110(a)(2)(A) for 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 to make these data available to EPA upon request. Each year, states submit annual air

<sup>3</sup> EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available in the docket for today's action), as well as in numerous agency actions, including EPA's prior action on Maine's infrastructure SIP to address the 2008 Ozone NAAQS. *See* 83 FR 28157 (June 18, 2018).

<sup>4</sup> *See Montana Env'tl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

<sup>5</sup> All referenced memoranda are included in the docket for today's action.

<sup>6</sup> *See*, for example, EPA's final rule on "National Ambient Air Quality Standards for Lead," 73 FR 66964, 67034 (November 12, 2008).

<sup>7</sup> The citations reference the most recent EPA approval of the stated rule or of revisions to the rule.

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.

Pursuant to authority granted to it by 38 Maine Revised Statutes Annotated (MRSA) §§ 341–A(1) and 584–A, Maine DEP operates an air quality monitoring network, and EPA approved the state's 2020 Annual Air Monitoring Network Plan for ozone on September 11, 2019.<sup>8</sup>

Furthermore, DEP 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 proposes that Maine 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 for the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under prevention of significant deterioration (PSD) and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) Enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications.

##### **Sub-Element 1: Enforcement of SIP Measures**

Maine's authority for enforcing SIP measures is established in 38 MRSA Section 347–A, “Violations,” 38 MRSA Section 347–C, “Right of inspection and entry,” 38 MRSA Section 348, “Judicial Enforcement,” 38 MRSA Section 349, “Penalties,” and 06–096 CMR Chapter

115, “Major and Minor Source Air Emission License Regulations,” and includes processes for both civil and criminal enforcement actions. Construction of new or modified stationary sources in Maine is regulated by 06–096 CMR Chapter 115, “Major and Minor Source Air Emission License Regulations,” which requires best available control technology (BACT) controls for PSD sources, including the ozone precursors VOC and NO<sub>x</sub>. EPA proposes that Maine has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

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

Prevention of significant deterioration (PSD) applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS. EPA interprets the CAA as requiring each state to make an infrastructure SIP submission for a new or revised NAAQS demonstrating that the air agency has a complete PSD permitting program in place satisfying the current requirements for all regulated NSR pollutants.

Maine DEP's EPA-approved PSD rules, contained at 06–096 CMR Chapter 115, “Major and Minor Source Air Emission License Regulations,” contain provisions that address applicable requirements for all regulated NSR pollutants, including Greenhouse Gases (GHGs).

In determining whether a state has a comprehensive PSD permit program, EPA reviews the SIP to ensure that the air agency has a PSD permitting program meeting the current requirements for all regulated NSR pollutants, including the following EPA rules: The “Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline” (the “Phase 2 Rule”), 70 FR 71612 (November 29, 2005); the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)” (the “2008 NSR Rule”), 73 FR 28321 (May 16, 2008); and the “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring

Concentration (SMC)” (the “2010 NSR Rule”), 75 FR 64864 (October 20, 2010). In our proposal on March 26, 2018, regarding the submittal of infrastructure SIPs for the 2008 Pb, 2008 ozone, and 2010 NO<sub>2</sub> NAAQS by the Maine DEP, we explained how Maine's SIP meets the requirements of the Phase 2 Rule, the 2008 NSR Rule, and the 2010 NSR Rule. See 83 FR 12905. Based on our rationale contained in the March 26, 2018, notice, we propose to approve Maine's infrastructure SIP submittal with respect to the requirements of the Phase 2 Rule, the 2008 NSR Rule, and the 2010 NSR Rule.

We are proposing to approve Maine's February 2020 infrastructure submittal for this PSD sub-element of section 110(a)(2)(C) for the 2015 ozone NAAQS.

##### **Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications**

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulate emissions of the relevant NAAQS pollutants.

EPA last approved revisions to Maine's minor NSR program on August 1, 2016 (81 FR 50353). Maine and EPA rely on the existing minor NSR program in 06–096 CMR Chapter 115 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.

We are proposing to find that Maine has met the requirement to have a SIP-approved minor new source review permit program as required under Section 110(a)(2)(C) for the 2015 ozone NAAQS.

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

One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), also known as the “good neighbor” provisions, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution.

In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts

<sup>8</sup> EPA's approval letter is included in the docket for this action.

that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. EPA commonly refers to these requirements as Prong 1 (significant contribution to nonattainment) and Prong 2 (interference with maintenance). A state's SIP submission for Prongs 1 and 2 is also referred to as a state's "Transport SIP." In today's action, EPA is not evaluating Maine's Transport SIP (*i.e.*, Prongs 1 and 2; combined as (D)1 in Table 1 below). EPA will address Maine's Transport SIP for the 2015 ozone NAAQS in a future action.

Today's action, however, does address Section 110(a)(2)(D)(i)(II), which requires SIPs to contain adequate provisions to prohibit emissions that will interfere with measures included in the applicable implementation plan for any other state under part C of the Act to prevent significant deterioration of air quality and to protect visibility. EPA commonly refers to these requirements as Prong 3 (Prevention of Significant Deterioration) and Prong 4 (Visibility Protection). Today's action also addresses Section 110(a)(2)(D)(ii) of the Act, which requires SIPs to contain provisions to ensure compliance with sections 126 and 115 of the Act relating to interstate and international pollution abatement, respectively.

#### Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)

To prevent significant deterioration of air quality, this sub-element requires SIPs to include provisions that prohibit any source or other type of emissions activity in one state from interfering with measures that are required in any other state's SIP under Part C of the CAA. As explained in the 2013 memorandum,<sup>9</sup> a state may meet this requirement with respect to in-state sources and pollutants that are subject to PSD permitting through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. Maine has a comprehensive PSD permitting program in place satisfying the current requirements for all regulated NSR pollutants, as explained above in the discussion of Section 110(a)(2)(C).

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. EPA approved revisions to Maine's NNSR regulations on February 14, 1996.

See 61 FR 5690. These NNSR regulations contain provisions for how the state must treat and control sources in nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR part 51.

For these reasons, EPA proposes to approve Maine's submittal for the PSD requirements of 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS.

#### Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)

Prong 4 requires a state's SIP to have adequate provisions prohibiting emissions in amounts that will interfere with measures in other states' SIPs to protect visibility. The prong 4 requirement is closely connected to the regional haze program under part C of the CAA, in which states work together in a regional planning process to determine each state's contribution to the visibility impairment in that region and agree to emission reduction measures to improve visibility. Maine is a member of the Mid-Atlantic/North East Visibility Union. EPA regulations require that a state participating in a regional planning process include in its regional haze SIP all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. *See, e.g.*, 40 CFR 51.308(d)(3). Thus, 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 and will, therefore, satisfy Prong 4.

EPA approved Maine's Regional Haze SIP on April 24, 2012 (77 FR 24385). Accordingly, EPA proposes that Maine meets the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS.

#### Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement

This sub-element requires that each SIP contain provisions requiring compliance with requirements of CAA 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.

EPA-approved regulations require the Maine DEP to provide pre-construction notice of new or modified sources to,

among others, "any State . . . whose lands may be affected by emissions from the source or modification." *See* 06–096 CMR Chapter 115, § IX(E)(3); approved March 23, 1993 (58 FR 15422). Such notice "shall announce availability of the application, the Department's preliminary determination in the form of a draft order, the degree of increment consumption that is expected from the source or modification, as well as the opportunity for submission of written public comment." *See* 06–096 CMR Chapter 115, § IX(E)(2).

These public notice requirements are consistent with the Federal SIP-approved PSD program's public notice requirements for affected states under 40 CFR 51.166(q). Therefore, we propose to approve Maine's compliance with the infrastructure SIP requirements of CAA section 126(a) for the 2015 ozone NAAQS. Maine has no obligations under any other provision of CAA section 126, and no source or sources within the state are the subject of an active finding under section 126 with respect to the 2015 ozone NAAQS.

#### 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 CAA 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 a NAAQS pollutant and its precursors, if applicable. There are no final findings under section 115 against Maine with respect to the 2015 ozone NAAQS. Therefore, EPA is proposing that Maine has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to CAA section 115 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. In addition, section 110(a)(2)(E)(ii) requires each state to comply with the requirements for state boards in CAA section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring implementation of SIP obligations with respect to relevant

<sup>9</sup> Included in the docket for today's action.

NAAQS. Section 110(a)(2)(E)(iii), however, does not apply to this action because Maine does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

**Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues**

Maine, through its infrastructure SIP submittal, has documented that its air agency has authority and resources to carry out its SIP obligations. Maine cites 38 MRSA § 341–A, “Department of Environmental Protection,” 38 MRSA § 341–D, “Board responsibilities and duties,” 38 MRSA § 342, “Commissioner, duties,” and 38 MRSA § 581, “Declaration of findings and intent.” These statutes provide the Maine DEP with the legal authority to enforce air pollution control requirements and carry out SIP obligations with respect to the 2015 ozone NAAQS. Additionally, state law provides the DEP with the authority to assess preconstruction permit fees and annual operating permit fees from air emissions sources and establishes a general revenue reserve account within the general fund to finance the state clean air programs. Maine also receives CAA sections 103 and 105 grant funds through Performance Partnership Grants along with required state-matching funds to provide funding necessary to carry out SIP requirements.

Maine states in its February 14, 2020, submittal for 2015 ozone NAAQS that the Bureau of Air Quality had a staff of 53 and a budget of \$4.8 million for FY 2016. ME DEP staff and operations are funded by the State and through EPA grants, including annual funding through CAA sections 103 and 105 to assist with the costs of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. Maine also has an EPA-approved fee program under CAA title V which is used to support title V program elements such as permitting, monitoring, testing, inspections, and enforcement. Furthermore, ME DEP’s budget has been consistent over the past number of years and over these years Maine has been able to meet its statutory commitments under the Act.<sup>10</sup> Based upon Maine’s submittal and this additional information, EPA proposes that Maine meets the infrastructure SIP requirements of this sub-element of

section 110(a)(2)(E) for the 2015 ozone NAAQS.

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

Section 110(a)(2)(E)(ii) requires each SIP to contain provisions that comply with the state board requirements of section 128(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. Section 128 further provides that a state may adopt more stringent conflicts of interest requirements and requires EPA to approve any such requirements submitted as part of a SIP.

Maine DEP consists of a Commissioner and a Board of Environmental Protection (“BEP” or “Board”), which is an independent authority under state law that reviews certain permit applications in the first instance and also renders final decisions on appeals of permitting actions taken by the Commissioner as well as some enforcement decisions by the Commissioner. Because the Board has authority under state law to hear appeals of some CAA permits and enforcement orders, EPA considers that the Board has authority to “approve” those permits or enforcement orders, as recommended in the 2013 Guidance at 42, and that the requirement of CAA § 128(a)(1) applies to Maine—that is, 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.”

Pursuant to state law, the BEP consists of seven members appointed by the Governor, subject to confirmation by the State Legislature. See 38 MRSA § 341–C(1). The purpose of the Board “is to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions.” *Id.* § 341–B. State law further provides that Board

members “must be chosen to represent the broadest possible interest and experience that can be brought to bear on the administration and implementation of” Maine’s environmental laws and that “[a]t least 3 members must have technical or scientific backgrounds in environmental issues and no more than 4 members may be residents of the same congressional district.” *Id.* § 341–C(2). As EPA has also explained in previous notices of proposed rulemakings related to Maine infrastructure SIP submittals, section 341–C fulfills the requirement that at least a majority of Board members represent the public interest, but it does not address the requirement that at least a majority “not derive any significant portion of their income from persons subject to” air permits and enforcement orders. See, e.g., 83 FR 66184 at 66192 (December 26, 2018). Nor is section 341–C(2) currently in Maine’s SIP. *Id.* In those previous actions, however, Maine DEP committed to revise section 341–C to address the requirement that at least a majority of Board members “not derive a significant portion of their income from persons subject to” air permits or enforcement orders and to submit the necessary provisions to EPA for inclusion in the SIP. *Id.*

On September 4, 2019, Maine did so, submitting revisions to 38 MRSA sections 341–C(2) and 341–C(8) for inclusion in the SIP.<sup>11</sup>

Maine revised section 341–C(2) by adding one word, indicating that Board members “must be chosen to represent the broadest possible *public* interest and experience that can be brought to bear on the administration and implementation of” Maine’s environmental laws. (emphasis added). EPA concludes that the addition of the word “public” only strengthens the conclusion that Maine fulfills the requirement that at least a majority of Board members represent the public interest. As for section 341–C(8), it now provides that:

A board member may not participate in the review of or act on any permitting decision or enforcement order under the federal Clean Air Act . . . if the board member receives or derives a significant portion of that board member’s income from persons subject to permits or enforcement orders under the federal Clean Air Act. Board members whose participation is restricted under this paragraph shall recuse themselves from all

<sup>10</sup> <https://www.maine.gov/budget/sites/maine.gov/budget/files/inline-files/Annual%20Report%202018-2019%20NEW.PDF>.

<sup>11</sup> By email dated October 20, 2020, Maine DEP clarified that it was requesting to add 38 MRSA § 341–C(8) to the SIP, except subparagraph (A), which addresses Board member participation in decisions regarding permits issued under the Clean Water Act. The October 20, 2020, email is included in the docket for this action.

permitting and enforcement matters under the federal Clean Air Act.

38 MRSA § 341–C(8)(B). Section 341–C(8) further provides, as recommended in EPA guidance,<sup>12</sup> that “a significant portion of income” means “10% or more of gross personal income for a calendar year” or “50% or more if the recipient is over 60” and receives it “under retirement, pension or similar arrangement.”

EPA proposes that section 341–C(2) and (8)(B) satisfy the requirements of CAA § 128(a)(1) that at least a majority of Board members “represent the public interest and do not derive any significant portion of their income from persons subject to” air permits and enforcement orders. EPA also proposes to add revised sections 341–C(2) and (8)(B) to the SIP, as requested by Maine DEP. We are also proposing to convert to full approval our previous conditional approvals of Maine’s infrastructure SIP submittals for the 2008 ozone, 2008 Pb and 2010 NO<sub>2</sub> NAAQS (June 18, 2018; 83 FR 28157); the 2010 SO<sub>2</sub> NAAQS (April 30, 2019; 84 FR 18142); the 1997 and 2006 PM<sub>2.5</sub> NAAQS (October 16, 2012; 77 FR 63228); and the 2012 PM<sub>2.5</sub> NAAQS (October 1, 2018; 83 FR 49295) for these particular requirements of section 110(a)(2)(E)(ii).

As noted above, section 128(a)(2) of the Act provides 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.” The purpose of section 128(a)(2) is to assure that conflicts of interest are disclosed by the ultimate decision maker in permit or enforcement order decisions. *See, e.g.*, 80 FR 42446, 42454 (July 17, 2015). Although the Board is the ultimate decision maker on air permitting decisions in Maine, certain air enforcement orders of the Maine DEP Commissioner are not reviewable by the Board, but rather may be appealed directly to Maine Superior Court. For this reason, EPA interprets the potential conflict-of-interest requirements of CAA § 128(a)(2) to be applicable in Maine to both Board members and the DEP Commissioner.

In the infrastructure SIP action for the 2008 Pb, 2008 ozone, and 2010 NO<sub>2</sub> NAAQS, EPA determined that Maine’s conflict of interest statute, 5 MRSA § 18, and a provision explicitly making it applicable to Board members, 38 MRSA

§ 341–C(7), together satisfy the CAA section 128(a)(2) requirement for Maine with respect to Board members, and EPA approved both statutes into the Maine SIP. *See* 83 FR 28157 (June 18, 2018). For more information, *see* 83 FR 12905, 12912 (March 26, 2018). EPA proposes that Maine’s SIP also satisfies CAA section 128(a)(2) with respect to Board members for the 2015 ozone NAAQS for the same reasons.

Regarding the DEP Commissioner, state law at 38 MRSA § 341–A(3)(D) also explicitly makes that official subject to 5 MRSA § 18, thus satisfying CAA section 128(a)(2) with respect to the Commissioner. While 38 MRSA § 341–A(3)(D) is not currently in the SIP, Maine DEP submitted it to EPA on September 4, 2019, and requested that it be added to the SIP. Therefore, we propose to approve, and incorporate into the Maine SIP, 38 MRSA § 341–A(3)(D) for the 2015 ozone NAAQS. We also propose to convert previous conditional approvals of Maine’s infrastructure SIP submittals for the 2008 ozone; 2008 Pb; 2010 NO<sub>2</sub>; 2010 SO<sub>2</sub>; 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS to full approvals for section 128(a)(2).

In sum, and for the reasons provided above, EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(E)(ii) 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.

Maine’s infrastructure submittal references several existing state regulations that require sources to monitor emissions and submit reports. Maine 06–096 CMR Chapter 117, “Source Surveillance” specifies air-emission sources that are required to operate continuous emission monitoring systems (CEMS) and details the performance specifications, quality assurance requirements and procedures

for such systems, and subsequent record keeping and reporting requirements. *See* 54 FR 11524 (August 9, 1988). Maine 06–096 CMR Chapter 137, “Emission Statements” requires sources to monitor and report annually to Maine DEP emissions of criteria pollutants and other emissions-related information under certain circumstances. *See* 82 FR 20257 (May 1, 2017).

Maine cites its regulation for implementing its operating permit program pursuant to 40 CFR part 70: 06–096 CMR Chapter 140, “Part 70 Air Emission License Regulations.” These regulations identify the sources of air emissions that require a Part 70 air emission license and incorporate the requirements of Title IV and Title V of the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*; and 38 MRSA §§ 344 and 590. These regulations contain compliance assurance requirements regarding monitoring and reporting for licensed sources requiring a Part 70 air emission license. *See* 66 FR 52874 (October 18, 2001). In addition, Maine cites 06–096 CMR Chapter 115, “Major and Minor Source Air Emission License Regulations,” which contains compliance assurance requirements for licensed sources. *See* 81 FR 50353 (August 1, 2016).

Regarding the section 110(a)(2)(F) requirements that the SIP provides for correlation and public availability of emission reports, Maine’s emission statement rule, Chapter 137, requires facilities to report emissions of air pollutants on an annual basis. The Maine DEP uses a web-based electronic reporting system, the Maine Air Emissions Inventory Reporting System (“MAIRIS”), to submit reported emissions data to EPA under the national emission inventory (NEI) program. NEI data are available to the public.<sup>13</sup> The MAIRIS system electronically correlates reported emissions data with permit conditions and other applicable standards and identifies inconsistencies and potential compliance concerns.

In addition, Maine DEP certifies that Maine’s Freedom of Access law does not include any exceptions that apply to stationary source emissions and that there are no provisions in Maine law that would prevent the use of any credible evidence of noncompliance, as required by 40 CFR 51.212. *See also* 06–096 CMR Chapter 140, § 3(E)(7)(a)(v) (“Notwithstanding any other provision in the State Implementation Plan approved by the EPA or Section 114(a) of the CAA, any credible evidence may

<sup>12</sup> See Memorandum from David O. Bickart to Regional Air Directors, “Guidance to States for Meeting Conflict of Interest Requirements of Section 128,” Suggested Definitions, March 2, 1978, included in the docket for this action.

<sup>13</sup> NEI data are available at <https://www.epa.gov/air-emissions-inventories>.

be used for the purpose of establishing whether a person has violated or is in violation of any statute, regulation, or Part 70 license requirement.”).

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(F) for the 2015 ozone NAAQS.

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

This section requires that a plan provide for state authority analogous to that provided to the EPA Administrator in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an “imminent and substantial endangerment to public health or welfare, or the environment.” Section 303 further authorizes the Administrator to issue “such orders as may be necessary to protect public health or welfare or the environment” in the event that “it is not practicable to assure prompt protection . . . by commencement of such civil action.”

We propose to find that a combination of state statutes and regulations discussed in Maine’s submittal provides for authority comparable to that given the Administrator in CAA section 303, as explained below. First, 38 MRSA § 347–A, “Emergency Orders,” provides that “[w]henver it appears to the commissioner, after investigation, that there is a violation of the laws or regulations [DEP] administers or of the terms or conditions of any of [DEP’s] orders that is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger.” See 38 MRSA § 347–A(3). Section 347–A further authorizes the DEP Commissioner to initiate an enforcement action in state court in the event of a violation of such emergency order issued by the Commissioner. *Id.* § 347–A(1)(A)(4). Similarly, 38 MRSA § 348, “Judicial Enforcement,” authorizes DEP to institute injunction proceedings “[i]n the event of a violation of any provision of the laws administered by [DEP] or of any order, regulation, license, permit, approval, administrative consent agreement or decision of the board or commissioner.” *Id.* § 348(1). Section 348 also authorizes DEP to seek a court order to restrain a source if it “finds that the discharge,

emission or deposit of any materials into any waters, air or land of th[e] State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property.” *Id.* § 348(3). Thus, these provisions authorize DEP to issue an administrative order or 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, if there is also a violation of a law, regulation, order, or permit administered or issued by DEP, as the case may be.

Maine also cites 38 MRSA § 591, “Prohibitions,” as contributing to its authority. Section 591 provides that “[n]o person may discharge air contaminants into ambient air within a region in such manner as to violate ambient air quality standards established under this chapter or emission standards established pursuant to section 585, 585–B or 585–K.” In those cases where emissions of ozone, or ozone precursors may be causing or contributing to an “imminent and substantial endangerment to public health or welfare, or the environment,” a violation of § 591 would also occur, since Maine law provides that ambient air quality standards are designed to prevent “air pollution,” *id.* § 584, which state law expressly defines as “the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration *as to be injurious to human, plant or animal life or to property*, or which unreasonably interfere with the enjoyment of life and property,” *id.* § 582(3) (emphasis added).

In its submittal, Maine further explains that sections 347–A and 591 “together authorize the Commissioner to issue an emergency order upon finding an apparent violation of DEP laws or regulations to address emissions of criteria pollutants, air contaminants governed by standards promulgated under section 585, and hazardous air pollutants governed by standards promulgated under section 585–B.” Maine explains that, in the unlikely event that air emissions create a substantial or immediate threat to the public health, safety, or to the environment without violating any DEP law or regulation, the DEP commissioner can notify the Governor of an imminent threat, and the Governor can then exercise emergency authority under 37–B MRSA § 742 to issue an order to terminate the cause of the emergency. In the declaration of a state

of emergency, the Governor may, among other things, “[o]rder the termination, temporary or permanent, of any process, operation, machine or device which may be causing or is understood to be the cause of the state of emergency,” *id.* § 742(1)(C)(11).

Finally, Maine’s submittal cites 06–096 CMR Chapter 109, “Emergency Episode Regulations,” which sets forth various emission reduction plans intended to prevent air pollution from reaching levels that would cause imminent and substantial harm and recognizes the Commissioner’s authority to issue additional emergency orders pursuant to 38 MRSA § 347–A, as necessary to the health of persons, by restricting emissions during periods of air pollution emergencies. For these reasons, we propose to find that Maine’s submittal and certain state statutes and regulations provide for authority comparable to that provided to the Administrator in CAA § 303.

Section 110(a)(2)(G) also requires that, for any NAAQS, Maine 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). A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. *Id.* All AQCRs in Maine are classified as Priority III areas for NO<sub>2</sub> and ozone, pursuant to 40 CFR 52.1021. Consequently, as relevant to this proposed rulemaking action, Maine’s SIP does not need to contain an emergency contingency plan meeting the specific requirements of 51.152 with respect to NO<sub>2</sub> and ozone.

Maine does, however, as a matter of practice, post on the internet daily forecasted ozone levels through the EPA AIRNOW and EPA ENVIROFLASH systems. Information regarding these two systems is available on EPA’s website at [www.airnow.gov](http://www.airnow.gov). Notices are sent out to ENVIROFLASH participants when levels are forecast to exceed the current 8-hour ozone standard. In addition, when levels are expected to exceed the ozone standard in Maine, the media are alerted via a press release, and the National Weather Service (NWS) is alerted to issue an Air Quality Advisory through the normal NWS weather alert system. These actions are similar to the notification and communication requirements of 40 CFR 51.152.

EPA proposes that Maine meets the applicable infrastructure SIP requirements for section 110(a)(2)(G), including contingency-plan requirements, 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 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 EPA finds that the SIP is substantially inadequate.

Maine's infrastructure submittal references 38 MRSA § 581, "Declaration of findings and intent," which characterizes the state's laws regarding the Protection and Improvement of Air as an exercise of "the police power of the State in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of all of the citizens of the State; protects property values and protects plant and animal life."

In addition, we note that Maine DEP is required by statute to "prevent, abate and control the pollution of the air[, to] preserve, improve and prevent diminution of the natural environment of the State[, and to] protect and enhance the public's right to use and enjoy the State's natural resources." See 38 MRSA § 341–A(1). Furthermore, DEP is authorized to "adopt, amend or repeal rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering." *Id.* § 341–H; see also *id.* § 585–A (recognizing DEP's rulemaking authority to propose SIP revisions). These statutes give Maine DEP the power to revise the Maine SIP from time to time as may be necessary to take account of changes in the NAAQS or the availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate. Therefore, EPA proposes that Maine meets the infrastructure SIP requirements of CAA section 110(a)(2)(H) with respect to the 2015 ozone NAAQS.

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

Section 110(a)(2)(I) provides that each plan or plan revision for an area designated as a nonattainment area shall meet the applicable requirements of part D of the CAA. EPA interprets section 110(a)(2)(I) to be inapplicable to the infrastructure SIP process because specific SIP submissions for designated nonattainment areas, as required under part D, are subject to a different

submission schedule under subparts 2 through 5 of part D, extending as far as 10 years following area designations for some elements, whereas infrastructure SIP submissions are due within three years after adoption or revision of a NAAQS. Accordingly, EPA takes action on part D attainment plans through separate processes.

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

Section 110(a)(2)(J) of the CAA requires that each SIP "meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection)." The evaluation of the submission from Maine with respect to these requirements is described below.

##### *Sub-Element 1: Consultation With Government Officials*

Pursuant to CAA section 121, a state must provide a satisfactory process for consultation with local governments and Federal Land Managers (FLMs) in carrying out its NAAQS implementation requirements.

Maine 38 MRSA § 341–A(1) authorizes Maine DEP to "prevent, abate and control the pollution of the air[,] improve and prevent diminution of the natural environment of the State[,] protect and enhance the public's right to use and enjoy the State's natural resources and . . . educate the public on natural resource use, requirements and issues." Maine state law further provides that one of the purposes of the BEP is "to provide for credible, fair and responsible public participation in department decisions," 38 MRSA § 341–B, and authorizes it to "cooperate with other state or federal departments or agencies to carry out" its responsibilities, *id.* § 341–F(6). In addition, 06–096 CMR Chapter 115, § IX(E)(3), which was approved by EPA on March 23, 1993, requires DEP to provide notice to relevant municipal officials and FLMs, among others, of DEP's preparation of a draft permit for a new or modified source. See 58 FR 15422.

In addition, with respect to area reclassifications to Class I, II, or III for PSD purposes, the DEP is required to offer an opportunity for a public hearing and to consult with appropriate FLMs. See 38 MRSA § 583–B; and 06–096 CMR Chapter 114, § 1(E). Maine's Transportation Conformity rule at 06–096 CMR Chapter 139 also provides

procedures for interagency consultation, resolution of conflicts, and public consultation and notification. Finally, the Maine Administrative Procedure Act (Maine Revised Statutes Title 5, Chapter 375, subchapter 2) requires notification and provision of comment opportunities to all parties affected by proposed regulations. All SIP revisions undergo public notice and opportunity for hearing, which allows for comment by the public, including local governments. EPA proposes that Maine meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) for the 2015 ozone NAAQS.

##### *Sub-Element 2: Public Notification*

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

As mentioned above, 38 MRSA § 341–A(1) authorizes Maine DEP to, among other things, "educate the public on natural resource use, requirements and issues." To that end, the DEP issues press releases and posts warnings on its website advising people what they can do to help prevent NAAQS exceedances and avoid adverse health effects on poor air quality days. In addition, the Maine DEP website includes near real-time air quality data, and a record of historical data. Air quality forecasts are distributed daily via email to interested parties. Air quality alerts are sent by email to a large number of affected parties, including the media. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions and to reduce the public's exposure. Also, Air Quality Data Summaries of the year's air quality monitoring results are issued annually and posted on the Maine DEP website. The state is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs.

EPA proposes that Maine meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) for the 2015 ozone NAAQS.

##### *Sub-Element 3: PSD*

EPA has already discussed Maine's PSD program in the context of infrastructure SIPs in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and determined that it satisfies the requirements of EPA's PSD implementation rules. Therefore, the SIP also satisfies the PSD sub-element of

section 110(a)(2)(J) for the 2015 ozone NAAQS. EPA proposes to approve the SIP for the PSD sub-element of section 110(a)(2)(J) for the 2015 ozone NAAQS.

#### Sub-Element 4: Visibility Protection

States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 memorandum, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2015 ozone NAAQS. Therefore, we are not proposing action on this sub-element.

#### 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 for the purpose of predicting 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 also recommends in the 2013 memorandum 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.

Maine state law implicitly authorizes Maine DEP to perform air quality modeling and provide such modeling data to EPA upon request. *See* 38 MRSA §§ 341–A(1), 581, 591–B. In addition, EPA-approved 06–096 CMR Chapter 115, "Major and Minor Source Air Emissions License Regulations," and 06–096 CMR Chapter 140 Part 70, "Air Emission License Regulations," provide that any modeling required for pre-construction permits and operating permits for minor and major sources be performed consistent with EPA-prescribed modeling guidelines at 40 CFR part 51, appendix W. Chapter 115 also requires that applicants submit data related to modeling to Maine DEP. *See* 06–096 CMR chapter 115, § VII.E. Consequently, the SIP provides for such

air quality modeling as the Administrator has prescribed and for the submission, upon request, of data related to such modeling.

In its infrastructure submittal, DEP also cites 06–096 CMR Chapter 116, "Prohibited Dispersion Techniques," which includes regulations applicable to the State's air quality modeling consistent with federal requirements concerning stack height and other dispersion techniques, such as merging of plumes. These regulations also define the area surrounding the source where ambient air quality standards do not have to be met. Maine also collaborates with the Ozone Transport Commission (OTC) and the Mid-Atlantic Regional Air Management Association and EPA in order to perform large-scale urban air shed modeling for ozone if necessary.

EPA proposes that Maine meets the 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.

Maine implements and operates a Title V permit program, *see* 38 MRSA § 353–A; 06–096 CMR Chapter 140, which was approved by EPA on October 18, 2001, *see* 66 FR 52874. To gain this approval, Maine demonstrated the ability to collect sufficient fees to run the program. *See* 61 FR 49289 (September 19, 1996). Maine also notes in its infrastructure submittal that the costs of all CAA permitting, implementation, and enforcement for new or modified sources are covered by Title V fees, which are set by Maine DEP. *See* 38 MRSA §§ 353–A, 352(2)(E). Therefore, EPA proposes that Maine 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 participation by, local political subdivisions affected by the SIP. Maine Administrative Procedure Act, 5 MRSA Chapter 375, requires public notice of all SIP revisions prior to their adoption, which allows for comment by the public, including local political subdivisions. In addition, Maine cites 38 MRSA § 597, "Municipal air pollution control," which provides that municipalities are not preempted from studying air pollution and adopting and enforcing "air pollution control and abatement ordinances" that are more

stringent than those adopted by DEP or that "touch on matters not dealt with" by state law. Finally, Maine cites Chapter 9 of Maine's initial SIP, which was approved on May 31, 1972 and contains intergovernmental cooperation provisions. *See* 37 FR 10842.

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2015 ozone NAAQS.

#### N. Maine Regulations Submitted for Incorporation Into the SIP

As noted under sections 110(a)(2)(A) and (E) above, Maine submitted revisions to a regulation and to a statute for approval into the Maine SIP. On May 22, 2019, Maine submitted a SIP revision containing Maine's updated Chapter 110, "Ambient Air Quality Standards." EPA is proposing to approve this revised regulation into the Maine SIP in order to update Maine's ambient air quality standards to be consistent with the 2015 ozone and 2012 PM<sub>2.5</sub>, and to align the rules governing the Maine ambient air quality standards to provide consistency with the federal NAAQS.

On September 4, 2019, to meet conflict-of-interest requirements of section 110(a)(2)(E) for the 2015 ozone NAAQS, as well as for previous infrastructure submittals for other NAAQS, Maine submitted Maine Public Law 2019, Chapter 180 amending 38 MRS Sections 341–C(2) and 341–C(8), effective September 19, 2019; and 38 MRS Section 341–A(3)(D), effective June 15, 2011. EPA is proposing to approve these conflict-of-interest provisions into the Maine SIP.

#### III. EPA's Evaluation of Maine's Negative Declaration for the Oil and Gas Industry for the 2008 and 2015 Standards

On May 18, 2020, Maine submitted a negative declaration for the 2016 Oil and Natural Gas Industry CTG for the 2008 and 2015 ozone standards. The term "negative declaration" means that the state has explored whether any facilities subject to the applicability requirements of the CTG exist within the state and concluded that there are no such sources within its borders. The negative declaration means that Maine has no applicable stationary sources of VOC that are covered by this CTG. This is consistent with EPA's understanding of where sources subject to the Oil and Natural Gas Industry CTG are located based on EPA data resources of industrial activity within the United States, such as the National Emissions Inventory (NEI) database of sources of air pollution, which is available at:

<https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei>. We also note that EPA Region 1 worked with Maine, and EPA headquarters' technical experts on the CTG, to review the applicability criteria of EPA's 2016 Oil and Gas CTG to assist Maine with its determination. Therefore, we are proposing to approve

Maine's negative declaration into the SIP.

#### IV. Proposed Action

EPA is proposing to approve most of the elements of the infrastructure SIP submitted by Maine on February 14, 2020, for the 2015 ozone NAAQS. Today's action does not include the

“good neighbor” provisions (*i.e.*, section 110(a)(2)(D)(i)), also known as a state's Transport SIP. Maine's Transport SIP for the 2015 ozone NAAQS will be addressed in a future action.

EPA's proposed action regarding each infrastructure SIP requirement for the 2015 ozone NAAQS is contained in Table 1 below.

TABLE 1—PROPOSED ACTION ON NEW HAMPSHIRE'S INFRASTRUCTURE SIP SUBMITTAL FOR THE 2015 OZONE NAAQS

Element	2015 ozone NAAQS
(A): Emission limits and other control measures .....	A
(B): Ambient air quality monitoring and data system .....	A
(C)1: Enforcement of SIP measures .....	A
(C)2: PSD program for major sources and major modifications .....	A
(C)3: PSD program for minor sources and minor modifications .....	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS .....	No action
(D)2: PSD .....	A
(D)3: Visibility Protection .....	A
(D)4: Interstate Pollution Abatement .....	A
(D)5: International Pollution Abatement .....	A
(E)1: Adequate resources .....	A
(E)2: State boards .....	A
(E)3: Necessary assurances with respect to local agencies .....	NA
(F): Stationary source monitoring system .....	A
(G): Emergency power .....	A
(H): Future SIP revisions .....	A
(I): Nonattainment area plan or plan revisions under part D .....	+
(J)1: Consultation with government officials .....	A
(J)2: Public notification .....	A
(J)3: PSD .....	A
(J)4: Visibility protection .....	+
(K): Air quality modeling and data .....	A
(L): Permitting fees .....	A
(M): Consultation and participation by affected local entities .....	A

In the above table, the key is as follows:

A: Approve.

+: Not germane to infrastructure SIPs.

No action: EPA is taking no action on this infrastructure requirement.

NA: Not applicable.

EPA also is proposing to approve, and incorporate into the Maine SIP, the following Regulation, submitted on May 28, 2019, and Statutes, submitted on September 4, 2019:

*06–096 CMR Chapter 110, “Ambient Air Quality Standards,”* effective March 27, 2019.

*Maine Public Law 2019, Chapter 180 amending 38 MRS Sections 341–C(2) and 341–C(8) (except 341–C(8)A),* effective September 19, 2019.

*Maine Public Law 2011, Chapter 357 amending 38 MRS Section 341–A(3)(D),* effective June 15, 2011.

In addition, we are proposing to convert to full approvals previous conditional approvals of section 110(a)(2)(E) in Maine's infrastructure SIPs for the 2008 ozone; 2008 Pb; 2010 NO<sub>2</sub>; 2010 SO<sub>2</sub>; and 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS, as well as previous conditional approvals of section 110(a)(2)(A) in Maine's infrastructure SIPs for the 1997 and 2006 PM<sub>2.5</sub>.

Finally, we are proposing to approve a negative declaration for EPA's 2016 CTG entitled “Control Techniques Guidelines for the Oil and Natural Gas Industry” for the 2008 and 2015 ozone standards into the Maine SIP.

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

#### IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference amendments to Maine's regulation

Chapter 110, Ambient Air Quality Standards, and conflict-of-interest provisions in Maine's 38 MRSA Section 341. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### V. Statutory and Executive Order Reviews

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

impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

- Is not expected to be 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 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead,

Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 2, 2020.

**Dennis Deziel,**

*Regional Administrator, EPA Region 1.*

[FR Doc. 2021-00458 Filed 1-21-21; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Chapter I

[EPA-HQ-OPPT-2020-0565; FRL-10019-39]

### TSCA Section 21 Petition for Rulemaking; Reasons for Agency Response; Denial of Requested Rulemaking

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

**ACTION:** Petition; reasons for Agency response.

**SUMMARY:** This document provides the reasons for the Environmental Protection Agency's (EPA's) response to a petition it received under the Toxic Substances Control Act (TSCA) from the Center for Environmental Health, Cape Fear River Watch, Clean Cape Fear, Democracy Green, Toxic Free NC, and the NC Black Alliance on October 14, 2020. Generally, the petitioners requested that EPA initiate a rulemaking proceeding or issue an order under TSCA compelling health and environmental effects testing on 54 Per- and Polyfluoroalkyl Substances (PFAS) that the petitioners assert are manufactured by The Chemours Company (Chemours) at its chemical production facility in Fayetteville, North Carolina. The petitioners also request that EPA ask the National Academy of Sciences to create an independent science panel to oversee all aspects of the testing program requested by the petitioners. After careful consideration, EPA denied the TSCA petition for reasons discussed in this document.

**DATES:** EPA's response to this TSCA section 21 petition was signed January 7, 2021.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2020-0565, is available online at <https://www.regulations.gov> or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William

Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Public Reading Room are closed to visitors with limited exceptions. The EPA/DC staff continue to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

*For technical information contact:* Daniel R. Ruedy, Data Gathering and Analysis Division (7410M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-7974; email address: [ruedy.daniel@epa.gov](mailto:ruedy.daniel@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this action apply to me?

This action is directed to the public in general. This action, however, may be of particular interest to those persons who manufacture (which includes import), distribute in commerce, process, use, or dispose of one or more of the 54 Per- and Polyfluoroalkyl Substances (PFAS) identified in the petition. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

##### B. What is EPA's authority for taking this action?

Under TSCA section 21 (15 U.S.C. 2620), any person can petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8, or to issue an order under TSCA sections 4, 5(e), or 5(f). A TSCA section 21 petition must set forth the facts which it is claimed establish that it is necessary to initiate the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly