Potomac River, within an area bounded by a line connecting the following points: From the Rosilie Island shoreline at latitude 38°47′30.30″ N, longitude 077°01′26.70 W, thence west to latitude 38°47′30.00″ N, longitude 077°01′37.30″ W, thence south to latitude 38°47′08.20″ N, longitude 077°01′37.30″ W, thence east to latitude 38°47′09.00″ N, longitude 077°01′09.20″ W, thence southeast along the pier to latitude 38°47′06.30″ N, longitude 077°01′02.50″ W, thence north along the shoreline and west along the southern extent of the Woodrow Wilson (I–95/I–495) Memorial Bridge and south and west along the shoreline to the point of origin, located at National Harbor, MD. These coordinates are based on datum NAD 1983.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means all persons and vessels registered with the event sponsor as participating in the Washington DC Sharkfest Swim event or otherwise designated by the event sponsor as having a function tied to the event.

(c) *Regulations.* (1) Except for vessels already at berth, all non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP Maryland-National Capital Region or PATCOM.

(2) To seek permission to enter, contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Those in the regulated area must comply with all lawful orders or directions given to them by the COTP Maryland-National Capital Region or PATCOM.

(3) The COTP Maryland-National Capital Region will provide notice of the regulated area through advanced notice via Fifth Coast Guard District Local Notice to Mariners, broadcast notice to mariners, and on-scene official patrols.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 7 a.m. to 11 a.m. June 20, 2020.

Dated: March 26, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020–06743 Filed 3–31–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2020–0057; FRL–10007–24–Region 1]

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

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 Vermont. This revision addresses the infrastructure requirements of the Clean Air Act (CAA or Act)—including the interstate transport provisions—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, including provisions prohibiting emissions that will have certain adverse air-quality effects in other states, are adequate to meet the state's responsibilities under the CAA. EPA is also proposing to approve State of Vermont Executive Order (E.O.) 19–17, *Executive Code of Ethics,* which Vermont submitted with its infrastructure submission for the 2015 ozone NAAQS to be added to the SIP. Because E.O. 19–17 supersedes and replaces E.O. 09–11, EPA is also proposing to remove E.O. 09–11 from the Vermont SIP. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before May 1, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2020–0057 at *https://www.regulations.gov,* or via email to *simcox.alison@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *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: 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.*

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

Table of Contents

I. Background and Purpose

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).[1] 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 requirements of section 110(a)(2).[2] On November 19, 2019, the Vermont Air Quality and Climate Division (AQCD) of the Department of Environmental Conservation (DEC) submitted a revision to its State Implementation Plan (SIP). The SIP revision addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2)—including the ''Good Neighbor'' or ''transport'' provisions—for the 2015 ozone NAAQS.

[1] 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.

[2] 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.

A. What is the scope of this rulemaking?

EPA is acting on the SIP submission from Vermont on the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS (including the transport provisions).

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.[3] 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.[4] 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 Vermont's 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 $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 memorandum). 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). Additional guidance documents specifically addressing the interstate-transport (''good neighbor'') provisions of infrastructure SIPs (CAA Section 110(a)(2)(D)) are given under Section II.D. below.

[3] 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*), as well as in numerous agency actions, including EPA's prior action on Vermont's infrastructure SIP to address the 2012 $PM_{2.5}$ NAAQS. *See* 83 FR 45194 (September 6, 2018).

[4] *See Montana Envtl. Info. Ctr.* v. *Thomas,* 902 F.3d 971 (9th Cir. 2018).

II. EPA's Evaluation of Vermont's Infrastructure SIP for the 2015 Ozone Standard

In this notice of proposed rulemaking, EPA is proposing action on Vermont's November 19, 2019, infrastructure SIP submission for the 2015 ozone NAAQS, including the interstate transport provisions (CAA section 110(a)(2)(D)(i)). In Vermont's submission, a detailed list of Vermont Laws and previously SIP-approved Air Quality Regulations show precisely how the various components of its EPA-approved SIP meet each of the requirements of section 110(a)(2) of the CAA for the 2015 ozone NAAQS. The following review evaluates the state's submission in light of section 110(a)(2) requirements and relevant EPA guidance. For the state's November 2019 submission, we provide an evaluation of the applicable Section 110(a)(2) elements, including the transport provisions.

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

This section (also referred to in this action as an element) of the Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[5] 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 November 2019 submittal for the 2015 ozone NAAQS, Vermont cites a number of provisions of Vermont Statutes Annotated (V.S.A.) in satisfaction of element A: 10 V.S.A. § 554, ''Powers,'' authorizes the Secretary of the Vermont Agency of

[5] See, for example, EPA's final rule on ''National Ambient Air Quality Standards for Lead,'' 73 FR 66964, 67034 (November 12, 2008).

Natural Resources [6] (ANR) to ''[a]dopt, amend and repeal rules, implementing the provisions'' of Vermont's air pollution control laws set forth in 10 V.S.A. chapter 23. It also authorizes the Secretary to ''conduct studies, investigations and research relating to air contamination and air pollution'' and to ''[d]etermine by appropriate means the degree of air contamination and air pollution in the state and the several parts thereof.'' EPA approved 10 V.S.A. § 554 on June 27, 2017 (82 FR 29005). Vermont also cites 10 V.S.A. § 556, ''Permits for the construction or modification of air contaminant sources,'' which requires applicants to obtain permits for constructing or modifying air contaminant sources, and 10 V.S.A. § 558, ''Emission control requirements,'' which authorizes the Secretary ''to establish emission control requirements . . . necessary to prevent, abate, or control air pollution.'' In addition, Vermont cites 10 V.S.A. § 579 ''Vehicle emissions labeling program for new motor vehicles'' for model year 2010 and later vehicles.

Under Element A of the November 2019 submittal, the state also cites more than 20 Vermont Air Pollution Control Regulations (VT APCR) that it has adopted to control the emissions related to ozone and ozone precursors (nitrogen oxides (NO_X) and volatile organic compounds (VOCs)). A few, with their EPA approval citation [7] are listed here: § 5–502—Major Stationary Sources and Major Modifications (81 FR 50342; August 1, 2016); § 5–251—Control of Nitrogen Oxides Emissions (81 FR 50342; August 1, 2016); § 5–253.5—Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities (81 FR 23164; April 20, 2016); 5–253.8—Industrial Adhesives (84 FR 65009; November 26, 2019); § 5–253.17—Industrial Cleaning Solvents (84 FR 65009; November 26, 2019).

EPA proposes that Vermont 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 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.

State law authorizes the Secretary of ANR, or authorized representative, to ''conduct studies, investigations and research relating to air contamination and air pollution'' and to ''[d]etermine by appropriate means the degree of air contamination and air pollution in the state and the several parts thereof.'' *See* 10 V.S.A. § 554(8), (9). Vermont Department of Environmental Conservation (DEC), one of several departments within ANR, operates an air quality monitoring network, and EPA approved the state's 2019 Annual Air Monitoring Network Plan on August 15, 2019.[8] Furthermore, Vermont populates EPA's Air Quality System (AQS) with air-quality monitoring data in a timely manner and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that Vermont 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

State law provides the Secretary of ANR with the authority to enforce air pollution control requirements, including SIP-approved 10 V.S.A. § 554, which authorizes the Secretary of ANR to ''[i]ssue orders as may be necessary to effectuate the purposes of [the state's air pollution control laws] and enforce the same by all appropriate administrative and judicial proceedings.'' In addition, Vermont's SIP-approved regulations VT APCR § 5–501, ''Review of Construction or Modification of Air Contaminant Sources,'' and VT APCR § 5–502, ''Major Stationary Sources and Major Modifications,'' establish requirements for permits to construct, modify or operate major air contaminant sources.

EPA proposes that Vermont 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

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. VT DEC's EPA-approved PSD rules, contained at VT APCR Subchapters I, IV, and V, contain provisions that address applicable requirements for all regulated NSR pollutants, including greenhouse gases (GHGs).

In 2018, EPA evaluated Vermont's PSD permitting program in the context of an infrastructure SIP submission under CAA § 110(a)(2)(C) and determined that it satisfies the current requirements for all regulated NSR pollutants. *See* 83 FR 45194 (September 6, 2018). For a detailed analysis, see EPA's proposal in that rulemaking. *See* 83 FR 30598 (June 29, 2018). No new or revised PSD permitting program requirements have become due since that time. Therefore, for the reasons provided in the June 29, 2018, notice, EPA proposes to approve Vermont's infrastructure SIP for the 2015 ozone NAAQS for the requirement in section 110(a)(2)(C) to include a PSD permitting program in the SIP that covers the requirements for all regulated NSR

[6] The Vermont Department of Environmental Conservation is one of three departments within the Vermont ANR.

[7] The citations reference the most recent EPA approval of the stated rule or of revisions to the rule.

[8] See EPA approval letter located in the docket for this action.

pollutants as required by part C of the Act.

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

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulate emissions of the relevant NAAQS pollutants. On August 1, 2016, EPA approved revisions to Vermont's minor NSR program. *See* 81 FR 50342. Vermont and EPA rely on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs, VT APCR § 5–502, do not interfere with attainment and maintenance of the 2015 ozone NAAQS.

We are proposing to find that Vermont 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

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. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

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

Background

Section 110(a)(2)(D)(i), known as the ''good neighbor'' provision, generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air-quality effects on other states due to interstate transport of pollution. There are four so-called ''prongs'' within CAA section 110(a)(2)(D)(i): Section 110(a)(2)(D)(i)(I) contains prongs 1 and 2, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. This sub-element addresses the first two prongs.

Under prongs 1 and 2 of the good neighbor provision, a SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or from interfering with maintenance of the NAAQS in another state (prong 2). EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air-quality problems under section 110(a)(2)(D)(i)(I).[9]

We note that EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter ($PM_{2.5}$) standards, and the CSAPR Update for the 2008 ozone NAAQS (CSAPR Update).[10] These actions only addressed interstate transport in the eastern United States [11] and did not address the 2015 ozone NAAQS.

Through the development and implementation of CSAPR, the CSAPR Update and previous regional rulemakings pursuant to the good neighbor provision,[12] the EPA, working in partnership with states, developed the following four-step interstate transport framework to address the requirements of the good neighbor provision for the ozone NAAQS: [13] (1) Identify downwind air quality problems; (2) identify upwind states that impact those downwind air quality problems sufficiently such that they are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), considering cost and air quality factors, to prevent linked upwind states identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

EPA has released several documents containing information relevant to evaluating interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, EPA published a notice of data availability (NODA) with preliminary interstate ozone transport modeling with projected ozone design values for 2023, on which we requested comment.[14] The year 2023 was used as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas.[15]

On October 27, 2017, we released a memorandum (2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA.[16] Although the 2017 memorandum also released data for a 2023 modeling year, we specifically stated that the modeling may be useful for states developing SIPs to address remaining good neighbor obligations for the 2008 ozone NAAQS, but did not address the 2015 ozone NAAQS. On March 27, 2018, we issued a memorandum (March 2018 memorandum) indicating the same 2023 modeling data released in the 2017 memorandum would also be useful for evaluating potential downwind air-quality problems with respect to the

[9] *See North Carolina* v. *EPA,* 531 F.3d 896, 909–911 (2008).

[10] *See* 76 FR 48208 (August 8, 2011) (*i.e.,* CSAPR); 81 FR 74504 (October 26, 2016) (*i.e.,* CSAPR Update).

[11] For purposes of CSAPR and the CSAPR Update action, the Western U.S. (or the West) was considered to consist of the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The Eastern U.S. (or the East) was considered to consist of the 37 states east of the 11 Western states.

[12] Other regional rulemakings addressing ozone transport include the NO_X SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

[13] The four-step interstate framework has also been used to address requirements of the good neighbor provision for some previous particulate matter and ozone NAAQS, including in the Western United States. *See, e.g.,* 83 FR 30380 (June 28, 2018); 83 FR 5375, 5376–77 (February 7, 2018).

[14] *See* Notice of Availability of the EPA's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS). 82 FR 1733 (January 6, 2017).

[15] 82 FR 1735 (January 6, 2017).

[16] See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in the docket for this action or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

2015 ozone NAAQS (step 1 of the four-step framework).

The March 2018 memorandum included newly available contribution-modeling results to assist states in evaluating their impact on potential downwind air-quality problems (step 2 of the four-step framework) in their efforts to develop good neighbor SIPs for the 2015 ozone NAAQS to address their interstate transport obligations.[17] EPA subsequently issued two more memoranda in August and October 2018, providing guidance to states developing good neighbor SIPs for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in step 2 and considerations for identifying downwind areas that may have problems maintaining the standard (under prong 2 of the good neighbor provision) at step 1 of the framework.[18]

The March 2018 memorandum describes the process and results of the updated photochemical and source-apportionment modeling used to project ambient ozone concentrations for the year 2023 and the state-by-state impacts on those concentrations. The March 2018 memorandum also explains that the selection of the 2023 analytic year aligns with the 2015 ozone NAAQS attainment year for Moderate nonattainment areas. As described in the 2017 and March 2018 memoranda, EPA used the Comprehensive Air Quality Model with Extensions (CAMx version 6.40) to model average and maximum design values in 2023 to identify potential nonattainment and maintenance receptors (*i.e.,* monitoring sites that are projected to have problems attaining or maintaining the 2015 ozone NAAQS).

The March 2018 memorandum presents design values calculated in two ways: first, following the EPA's historic ''3 x 3'' approach [19] to evaluating all sites, and second, following a modified approach for coastal monitoring sites in which ''overwater'' modeling data were not included in the calculation of future-year design values (referred to as the ''no water'' approach).

For purposes of identifying potential nonattainment and maintenance receptors in 2023, EPA applied the same approach used in the CSAPR Update, wherein EPA considered a combination of monitoring data and modeling projections to identify monitoring sites that are projected to have problems attaining or maintaining the NAAQS. Specifically, EPA identified nonattainment receptors as those monitoring sites with measured values [20] exceeding the NAAQS that also have projected (*i.e.,* in 2023) average design values exceeding the NAAQS. EPA identified maintenance receptors as those monitoring sites with projected maximum design values exceeding the NAAQS. This included sites with measured values below the NAAQS, but with projected average and maximum design values exceeding the NAAQS, and monitoring sites with projected average design values below the NAAQS, but with projected maximum design values exceeding the NAAQS. EPA included the design values and monitoring data for all monitoring sites projected to be potential nonattainment or maintenance receptors based on the updated 2023 modeling in Attachment B to the March 2018 memorandum.

After identifying potential downwind nonattainment and maintenance receptors, EPA performed nationwide, state-level ozone source-apportionment modeling to estimate the expected impact from each state to each nonattainment and maintenance receptor.[21] EPA included contribution information resulting from the source-apportionment modeling in Attachment C to the March 2018 memorandum. For more information on the modeling and analysis, please see the 2017 and March 2018 memoranda, the NODA for the preliminary interstate transport assessment, and the supporting technical documents included in the docket for this action.

In the CSAPR and the CSAPR Update, the EPA used a threshold of one percent of the NAAQS to determine whether a given upwind state was ''linked'' at step 2 of the four-step framework and would, therefore, contribute to downwind nonattainment and maintenance sites identified in step 1. If a state's impact did not equal or exceed the one-percent threshold, the upwind state was not ''linked'' to a downwind air quality problem, and the EPA, therefore, concluded the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's impact equaled or exceeded the one-percent threshold, the state's emissions were further evaluated in step 3, taking into account both air-quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the good neighbor provision.

As noted previously, on August 31, 2018, the EPA issued a memorandum (the August 2018 memorandum) providing guidance concerning potential contribution thresholds that may be appropriate to apply with respect to the 2015 ozone NAAQS in step 2. Consistent with the process for selecting the one-percent threshold in CSAPR and the CSAPR Update, the memorandum included analytical information regarding the degree to which potential air-quality thresholds would capture the collective amount of upwind contribution from upwind states to downwind receptors for the 2015 ozone NAAQS. The August 2018 memorandum indicated that, based on the EPA's analysis of its most recent modeling data, the amount of upwind collective contribution captured using a 1 parts per billion (ppb) threshold is generally comparable, overall, to the amount captured using a threshold equivalent to one percent of the 2015 ozone NAAQS. Accordingly, the EPA indicated that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to the one-percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS.[22]

While the March 2018 memorandum presented information regarding the EPA's latest analysis of ozone transport following the approaches the EPA has taken in prior regional rulemaking actions, the EPA has not made any final

[17] See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018, available in the docket for this action or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices*.

[18] *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018) (''August 2018 memorandum''), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in the docket for this action or at *https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs*.

[19] *See* March 2018 memorandum, p. 4.

[20] EPA used 2016 ozone design values, based on 2014–2016 measured data, which were the most current data at the time of the analysis. See attachment B of the March 2018 memorandum, p. B–1.

[21] As discussed in the March 2018 memorandum, EPA performed source-apportionment model runs for a modeling domain that covers the 48 contiguous United States and the District of Columbia, and adjacent portions of Canada and Mexico.

[22] *See* August 2018 memorandum, p. 4.

determinations regarding how states should identify downwind receptors with respect to the 2015 ozone NAAQS at step 1 of the four-step framework. Rather, the EPA noted that states have flexibility in developing their own SIPs to follow different analytical approaches than the EPA's, so long as their chosen approach has an adequate technical justification and is consistent with the requirements of the CAA.

Vermont's Submission for Prongs 1 and 2

On November 19, 2019, Vermont submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. This ''good neighbor SIP'' was included as an enclosure in the state's infrastructure SIP for the same NAAQS.

Vermont relied on the results of the EPA's modeling for the 2015 ozone NAAQS contained in the March 2018 memorandum to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Vermont. These results indicate Vermont's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.07 ppb. Vermont compared these values to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS. Because Vermont's impacts to neighboring states are projected to be less than 0.70 ppb, Vermont concluded that emissions from sources within the state will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

Vermont also reviewed ozone concentrations and trends measured at the state's three ambient air-quality monitors and noted that no concentrations at these monitors has exceeded the 2015 ozone NAAQS since 2010. Vermont also looked at EPA's projected emissions of ozone precursors performed in support of the CSAPR Update. This modeling included annual total NOx and VOC emissions by state for the years 2011 through 2017 and projected emissions for 2023.[23] For Vermont, emissions of ozone precursors have decreased for the period 2011–2017 and are projected to be lower in 2023 than in 2017.

Vermont's November 2019 Good Neighbor submission also lists and discusses Vermont's regulations for controlling emissions of ozone precursors, and its regional emissions-control strategies, including those it has implemented as a member of the Ozone Transport Commission.

EPA's Evaluation of Vermont's Submission

The EPA is proposing to rely on the 2023 modeling data identifying downwind receptors and upwind state contributions, as released in the March 2018 memorandum, to evaluate Vermont's good neighbor obligation with respect to the 2015 ozone NAAQS. On September 13, 2019, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its decision in *Wisconsin* v. *EPA* addressing legal challenges to the CSAPR Update, in which the EPA partially addressed certain upwind states' good neighbor obligations for the 2008 ozone NAAQS. 938 F.3d 303. While the court generally upheld the rule as to most of the challenges raised in the litigation, the court remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contributions in accordance with the attainment dates found in CAA section 181 by which downwind states must come into compliance with the NAAQS. *Id.* at 313. In light of the court's decision, the EPA is providing further explanation regarding why it proposes to find that it is appropriate and consistent with the statute—as well as the legal precedent—to use the 2023 analytic year for assessing good neighbor obligations for the 2015 ozone NAAQS.

The EPA believes that 2023 is an appropriate year for analysis of good neighbor obligations for the 2015 ozone NAAQS because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 2, 2024, Moderate area attainment date for the 2015 ozone NAAQS. The EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 ozone NAAQS is August 2, 2021, which currently applies in several downwind nonattainment areas evaluated in the EPA's modeling.[24] However, as explained below, the EPA does not believe that either the statute or applicable case law requires the evaluation of good neighbor obligations in a future year aligned with the attainment date for nonattainment areas classified as Marginal.

The good neighbor provision instructs the EPA and states to apply its requirements ''consistent with the provisions of'' title I of the CAA. CAA section 110(a)(2)(D)(i); *see also North Carolina* v. *EPA,* 531 F.3d 896, 911–12 (D.C. Circuit 2008). This consistency instruction follows the requirement that plans ''contain adequate provisions prohibiting'' certain emissions in the good neighbor provision. As the D.C. Circuit held in *North Carolina,* and more recently in *Wisconsin,* the good neighbor provision must be applied in a manner consistent with the designation and planning requirements in title I that apply in downwind states and, in particular, the timeframe within which downwind states are required to implement specific emissions control measures in nonattainment areas and submit plans demonstrating how those areas will attain, relative to the applicable attainment dates. *See North Carolina,* 896 F.3d at 912 (holding that the good neighbor provision's reference to title I requires consideration of both procedural and substantive provisions in title I); *Wisconsin,* 938 F.3d at 313–18.

While the EPA recognizes, as the court held in *North Carolina* and *Wisconsin,* that upwind emissions-reduction obligations, therefore, must generally be aligned with downwind receptors' attainment dates, unique features of the statutory requirements associated with the Marginal area planning requirements and attainment date under CAA section 182 lead the EPA to conclude that it is more reasonable and appropriate to require the alignment of upwind good neighbor obligations with later attainment dates applicable for Moderate or higher classifications. Under the Clean Air Act, states with areas designated nonattainment are generally required to submit, as part of their state implementation plan, an ''attainment demonstration'' that shows, usually through air-quality modeling, how an area will attain the NAAQS by the applicable attainment date. *See* CAA section 172(c)(1).[25] Such plans must also include, among other things, the adoption of all ''reasonably available''

[23] *https://www.epa.gov/air-emissions-modeling/2011-version-63-platform.*

[24] The Marginal area attainment date is not applicable for nonattainment areas already classified as Moderate or higher, such as the New York Metropolitan Area. For the status of all nonattainment areas under the 2015 ozone NAAQS, see U.S. EPA, 8-Hour Ozone (2015) Designated Area/State Information, *https://www3.epa.gov/airquality/greenbook/jbtc.html* (last updated Sept. 30, 2019).

[25] Part D of title I of the Clean Air Act provides the plan requirements for all nonattainment areas. Subpart 1, which includes section 172(c), applies to all nonattainment areas. Congress provided in subparts 2–5 additional requirements specific to the various NAAQS pollutants that nonattainment areas must meet.

control measures on existing sources, a demonstration of ''reasonable further progress'' toward attainment, and contingency measures, which are specific controls that will take effect if the area fails to attain by its attainment date or fails to make reasonable further progress toward attainment. *See, e.g.,* CAA section 172(c)(1); 172(c)(2); 172(c)(9).

Ozone nonattainment areas classified as Marginal are excepted from these general requirements under the CAA—unlike other areas designated nonattainment under the Act (including for other NAAQS pollutants), Marginal ozone nonattainment areas are specifically exempted from submitting an attainment demonstration and are not required to implement *any* specific emissions controls at existing sources in order to meet the planning requirements applicable to such areas. See CAA section 182(a): ''The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area.'' [26] Marginal ozone nonattainment areas are also exempted from demonstrating reasonable further progress towards attainment and submitting contingency measures. See CAA section 182(a), which does not include a reasonable further progress requirement and specifically notes that ''Section [172(c)(9)] of this title (relating to contingency measures) shall not apply to Marginal Areas.''

Existing regulations—either local, state, or federal—are typically part of the reason why ''additional'' local controls are not needed to bring Marginal nonattainment areas into attainment. As described in EPA's record for its final rule defining area classifications for the 2015 ozone NAAQS and establishing associated attainment dates, history has shown that most areas classified as Marginal for prior ozone standards attained the respective standards by the Marginal area attainment date (*i.e.,* without being re-classified to a Moderate designation). *See* 83 FR 10376.

As part of a historical lookback, EPA calculated that by the relevant attainment date for areas classified as Marginal, 85 percent of such areas attained the 1979 1-hour ozone NAAQS, and 64 percent attained the 2008 ozone NAAQS. *See* Response to Comments, section A.2.4.[27] Based on these historical data, EPA expects that many areas classified Marginal for the 2015 ozone NAAQS will also attain by the relevant attainment date as a result of emissions reductions that are already expected to occur through implementation of existing local, state, and federal emissions reduction programs. To the extent states have concerns about meeting their attainment date for a Marginal area, the CAA under section 181(b)(3) provides authority for them to voluntarily request a higher classification for individual areas, if needed.

Areas that are classified as Moderate typically have more pronounced air-quality problems than Marginal areas or have been unable to attain the NAAQS under the minimal requirements that apply to Marginal areas. *See* CAA sections 181(a)(1) (classifying areas based on the degree of nonattainment relative to the NAAQS), and 181(b)(2) (providing for reclassification to the next highest designation upon failure to attain the standard by the attainment date). Thus, unlike Marginal areas, the statute explicitly requires a state with an ozone nonattainment area classified as Moderate or higher to develop an attainment plan demonstrating how the state will address the more significant air-quality problem, which generally requires the application of various control measures to existing sources of emissions located in the nonattainment area. *See generally* CAA sections 172(c) and 182(b)–(e).

Given that downwind states are not required to demonstrate attainment by the attainment date or impose additional controls on existing sources in a Marginal nonattainment area, EPA believes that it would be inconsistent to interpret the good neighbor provision as requiring EPA to evaluate the necessity for upwind state emissions reductions based on air quality modeled in a future year aligned with the Marginal area attainment date. Rather, EPA believes it is more appropriate and consistent with the nonattainment planning provisions in title I to evaluate downwind air quality and upwind state contributions, and, therefore, the necessity for upwind state emissions reductions, in a year aligned with an area classification in connection with which downwind states are also required to demonstrate attainment and implement controls on existing sources—*i.e.,* with the Moderate area attainment date, rather than the Marginal area date. With respect to the 2015 ozone NAAQS, the Moderate area attainment date will be in the summer of 2024, and the last full year of monitored ozone-season data that will inform attainment demonstrations is, therefore, 2023.

The EPA's interpretation of the good neighbor requirements in relation to the Marginal area attainment date is consistent with the *Wisconsin* opinion. For the reasons explained below, the court's holding does not contradict the EPA's view that 2023 is an appropriate analytic year in evaluating good neighbor SIPs for the 2015 ozone NAAQS. The court in *Wisconsin* was concerned that allowing upwind emission reductions to be implemented after the applicable attainment date would require downwind states to obtain more emissions reductions than the Act requires of them, to make up for the absence of sufficient emissions reductions from upwind states. *See* 938 F.3d at 316. As discussed previously, however, this equitable concern only arises for nonattainment areas classified as Moderate or higher for which downwind states are required by the CAA to develop attainment plans securing reductions from existing sources and demonstrating how such areas will attain by the attainment date. *See, e.g.,* CAA section 182(b)(1) & (2) (establishing ''reasonable further progress'' and ''reasonably available control technology'' requirements for Moderate nonattainment areas). Ozone nonattainment areas classified as Marginal are not required to meet these same planning requirements, and thus the equitable concerns raised by the *Wisconsin* court do not arise with respect to downwind areas subject to the Marginal area attainment date.

The distinction between planning obligations for Marginal nonattainment areas and higher classifications was not before the court in *Wisconsin*. Rather, the court was considering whether the EPA, in implementing its obligation to promulgate federal implementation plans under CAA section 110(c), was required to fully resolve good neighbor obligations by the 2018 *Moderate* area attainment date for the 2008 ozone NAAQS. *See* 938 F.3d at 312–13. Although the court noted that petitioners had not ''forfeited'' an argument with respect to the Marginal area attainment date, *see id.* at 314, the court did not address whether its holding with respect to the 2018

[26] States with Marginal nonattainment areas are required to implement new source review permitting for new and modified sources, but the purpose of those requirements is to ensure that potential emissions increases do not interfere with progress towards attainment, as opposed to reducing existing emissions. Moreover, EPA acknowledges that states within ozone transport regions must implement certain emission control measures at existing sources in accordance with CAA section 184, but those requirements apply regardless of the applicable area designation or classification.

[27] Available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0202-0122.*

Moderate area date would have applied with equal force to the Marginal area attainment date because that date had already passed. Thus, the court did not have the opportunity to consider these differential planning obligations in reaching its decision regarding the EPA's obligations relative to the then-applicable 2018 Moderate area attainment date, because such considerations were not applicable to the case before the court.[28] For the reasons discussed here, the equitable concerns supporting the *Wisconsin* court's holding as to upwind state obligations relative to the Moderate area attainment date also support the EPA's interpretation of the good neighbor provision relative to the Marginal area attainment date. Thus, EPA proposes to conclude that its reliance on an evaluation of air quality in the 2023 analytical year for purposes of assessing good neighbor obligations with respect to the 2015 ozone NAAQS is based on a reasonable interpretation of the CAA and legal precedent.

As previously discussed, the March 2018 memorandum identifies potential downwind nonattainment and maintenance receptors, using the definitions applied in the CSAPR Update and using both the ''3 x 3'' and the ''no water'' approaches to calculating future year design values. The March 2018 memorandum identifies 57 potential nonattainment and maintenance receptors in the West in Arizona (2), California (49), and Colorado (6).[29] The March 2018 memorandum also provides contribution data regarding the impact of other states on the potential receptors.

For purposes of evaluating Vermont's 2015 ozone NAAQS interstate transport SIP submission, given that the state contributes less than one percent to downwind nonattainment and maintenance sites, it is reasonable to conclude that the state's impact will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. This is consistent with our October 13, 2016, action on Vermont's SIP with respect to the 2008 ozone NAAQS (81 FR 70631) and with the EPA's approach to both the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update. EPA notes, nonetheless, that consistent with the August 2018 memorandum, it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a one-percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS. However, for the reasons discussed below, it is unnecessary for EPA to determine whether it may be appropriate to apply a 1 ppb threshold for purposes of this action.

The EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Vermont's largest impact on any potential downwind nonattainment and maintenance receptor is 0.07 ppb.[30] This value is less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[31] and demonstrates that emissions from Vermont are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. Accordingly, we propose to conclude that emissions from Vermont will not contribute to any potential receptors, and, thus, the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

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

To prevent significant deterioration of air quality, this sub-element requires SIPs to include provisions that prohibit any source or other type of emissions activity in one state from interfering with measures that are required in any other state's SIP under Part C of the CAA. As explained in the 2013 memorandum, a state may meet this requirement with respect to in-state sources and pollutants that are subject to PSD permitting through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. As discussed above under element C, Vermont has such a PSD permitting program. 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's latest approval of some revisions to Vermont's NNSR regulations was on August 1, 2016. *See* 81 FR 50342. Therefore, we are proposing to approve this sub-element for the 2015 ozone NAAQS.

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

With regard to applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 memorandum, 2011 memorandum, and 2013 memorandum recommend that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. A fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will include all measures needed to achieve the state's apportionment of emission reduction obligations agreed upon through a regional planning process and will therefore ensure that emissions from sources under the air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility. EPA approved Vermont's Regional Haze SIP on May 22, 2012. *See*

[28] The D.C. Circuit, in a short judgment, subsequently vacated and remanded the EPA's action purporting to fully resolve good neighbor obligations for certain states for the 2008 ozone NAAQS, referred to as the CSAPR Close-Out, 83 FR 65878 (Dec. 21, 2018). *New York* v. *EPA,* No. 19–1019 (Oct. 1, 2019). That result necessarily followed from the *Wisconsin* decision, because as the EPA conceded, the Close-Out ''relied upon the same statutory interpretation of the Good Neighbor Provision'' rejected in *Wisconsin*. *Id.* slip op. at 3. In the Close-Out, the EPA had analyzed the year 2023, which was two years after the Serious area attainment date for the 2008 ozone NAAQS and not aligned with any attainment date for that NAAQS. *Id.* at 2. In *New York,* as in *Wisconsin,* the court was not faced with addressing specific issues associated with the unique planning requirements associated with the Marginal area attainment date.

[29] The number of receptors in the identified western states is 57, irrespective of whether the ''3 x 3'' or ''no water'' approach is used. Further, although the EPA has indicated that states may have flexibilities to apply a different analytic approach to evaluating interstate transport, including identifying downwind air quality problems, because the EPA is also concluding in this proposed action that Vermont will have an insignificant impact on any potential receptors identified in its analysis, Vermont need not definitively determine whether the identified monitoring sites should be treated as receptors for the 2015 ozone standard.

[30] The EPA's analysis indicates that Vermont will have a 0.07 ppb impact at the potential nonattainment receptor in Queens, NY (Site ID 360810124), which has a 2023 projected average design value of 70.2 ppb, a 2023 projected maximum design value of 72.0 ppb, and had a 2014–2016 design value of 69 ppb. The EPA's analysis further indicates that Vermont will have a 0.02 ppb impact at a potential nonattainment receptor in Suffolk, NY (Site ID 361030002), which has a projected 2023 average design value of 74.0 ppb, a 2023 projected maximum design value of 75.5 ppb, and had a 2014–2016 design value of 72 ppb. In addition, Vermont will have a 0.02 ppb impact at a potential nonattainment receptor in New Haven, CT (Site ID 90099002), which has a projected 2023 average design value of 69.9 ppb, a 2023 projected maximum design value of 72.6 ppb, and had a 2014–2016 design value of 76 ppb. *See* the March 2018 memorandum, attachment C.

[31] Because none of Vermont's impacts equal or exceed 0.70 ppb, they necessarily also do not equal or exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

77 FR 30212. Accordingly, EPA proposes that Vermont meets the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS.

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.

On August 1, 2016 (81 FR 50342), EPA approved revisions to VT APCR § 5–501, which includes a provision that requires VT ANR to provide notice of a draft PSD permit to, among other entities, any state whose lands may be affected by emissions from the source. VT APCR § 5–501(7)(c). Vermont's public notice requirements are consistent with the Federal PSD program's public notice requirements for affected states under 40 CFR 51.166(q). Therefore, we propose to approve Vermont's compliance with the infrastructure SIP requirements of section 126(a) for the 2015 ozone NAAQS. Vermont has no obligations under any other provision of section 126, and no source or sources within the state are the subject of an active finding under section 126 of the CAA with respect to the 2015 ozone NAAQS.

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 of the CAA against Vermont with respect to the 2015 ozone NAAQS. Therefore, EPA is proposing that Vermont has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA 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 NAAQS. Section 110(a)(2)(E)(iii), however, does not apply to this action because Vermont 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

Vermont, through its infrastructure SIP submittal, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. Vermont cites 10 V.S.A. § 553, which designates ANR as the air pollution control agency of the state, and 10 V.S.A. § 554, which provides the Secretary of ANR with the power to ''[a]dopt, amend and repeal rules, implementing the provisions'' of 10 V.S.A. Chapter 23, Air Pollution Control, and to ''[a]ppoint and employ personnel and consultants as may be necessary for the administration of'' 10 V.S.A. Chapter 23. Section 554 also authorizes the Secretary of ANR to ''[a]ccept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purposes of carrying out any of the functions of'' 10 V.S.A. Chapter 23. Additionally, 3 V.S.A. § 2822 provides the Secretary of ANR with the authority to assess air permit and registration fees, which fund state air programs. In addition to Federal funding and permit and registration fees, Vermont notes that the Vermont DEC Air Quality and Climate Division (AQCD) receives state funding to implement its air programs.[32]

EPA proposes that Vermont meets the infrastructure SIP requirements of this portion 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 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.

In Vermont, no board or body approves permits or enforcement orders; these are approved by the Secretary of Vermont ANR. Thus, with respect to this sub-element, Vermont is subject only to the requirements of paragraph (a)(2) of section 128 of the CAA (regarding conflicts of interest).

Vermont's November 19, 2019, infrastructure SIP included State of Vermont Executive Order (E.O.) 19–17, *Executive Code of Ethics,* and requested that we approve it into the SIP and remove E.O. 09–11, which E.O. 19–17 supersedes and replaces. EPA originally approved E.O. 09–11 into the SIP on June 27, 2017. *See* 82 FR 29005.

The submitted Order, E.O. 19–17, prohibits all Vermont executive branch appointees (including the ANR Secretary) from taking ''any action in any matter in which he or she has either a Conflict of Interest or the appearance of a Conflict of Interest, until the Conflict is resolved.'' [33] The Order also

[32] VT ANR's authority to carry out the provisions of the SIP identified in 40 CFR 51.230 is discussed in the sections of this document assessing elements A, C, F, and G, as applicable.

[33] The Order defines ''Conflict of Interest'' as ''a significant interest of an Appointee or such an interest, known to the Appointee, of a member of his or her immediate family or household, or of a business associate, in the outcome of a particular matter pending before the Appointee or his or her Public Body. 'Conflict of Interest' does not include any interest that (i) is no greater than that of other persons generally affected by the outcome of a matter (such as a policyholder in an insurance company or a depositor in a bank), or (ii) has been disclosed to the Secretary and found not to be significant.'' ''Appearance of a Conflict of Interest'' is defined in the Order as ''the impression that a reasonable person might have, after full disclosure of the facts, that an Appointee's judgment might be significantly influenced by outside interests, even though there may be no actual Conflict of Interest.''

prohibits a full-time appointee from being ''the owner of, or financially interested, directly or indirectly, in any Private Entity or private interest subject to the supervision of his or her respective Public Body, except as a policy holder in an insurance company or a depositor in a bank.'' [34] Additionally, the Order requires an appointee to ''take all reasonable steps to avoid any action or circumstances, including acts or circumstances which may not be specifically prohibited by th[e] Code [of Ethics], which might result in (1) [u]ndermining his or her independence or impartiality or action; (2) [t]aking official action based on unfair considerations; (3) [g]iving preferential treatment to any private interest or Private Entity based on unfair considerations; (4) [g]iving preferential treatment to any family member or member of the Appointee's household; (5) [u]sing public office for the advancement of personal interest; (6) [u]sing public office to secure special privileges or exemptions; (7) [a]dversely affecting the confidence of the public in the integrity of State government; or (8) undermining the climate of civility and respect required for every open, democratic government to thrive.''

The Order also includes specific disclosure requirements. Every appointee earning $30,000 or more per year, which includes the ANR Secretary, must file annually with the Vermont Secretary of Civil and Military Affairs an ''Ethics Questionnaire'' identifying ''significant personal interests'' that ''might conflict with the best interests of the state.'' Agency Secretaries must also disclose certain additional financial and contractual interests to the State Ethics Commission biennially. EPA proposes to find that E.O. 19–17 satisfies the CAA § 128 requirement applicable to Vermont that potential conflicts of interest by the head of an executive agency that approves permits or enforcement orders under the CAA be ''adequately disclosed.'' Consequently, EPA proposes to approve E.O. 19–17 into the Vermont SIP and, concurrently, to remove E.O. 09–11 from the Vermont SIP.

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

[34] The Order defines ''a direct or indirect financial interest'' to exclude ''any insignificant interest held individually or by a member of the Appointee's immediate household or by a business associate'' and ''any interest which is no greater than that of other persons who might be generally affected by the Supervision of the Appointee's Public Body.''

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. Lastly, the reports shall be available at reasonable times for public inspection.

Vermont's infrastructure submittal references existing state regulations previously approved by EPA that require sources to monitor emissions and submit reports. In particular, VT APCR § 5–405, Required Air Monitoring, provides that ANR ''may require the owner or operator of any air contaminant source to install, use and maintain such monitoring equipment and records, establish and maintain such records, and make such periodic emission reports as [ANR] shall prescribe.'' *See* 45 FR 10775 (February 19, 1980). Moreover, section 5–402, Written Reports When Requested, authorizes ANR to ''require written reports from the person operating or responsible for any proposed or existing air contaminant source, which reports shall contain,'' among other things, information concerning the ''nature and amount and time periods or durations of emissions and such other information as may be relevant to the air pollution potential of the source. These reports shall also include the results of such source testing as may be required under Section 5–404 herein.'' *See* 81 FR 50342 (August 1, 2016).

Section 5–404, Methods for Sampling and Testing of Sources authorizes ANR to ''require the owner or operator of [a] source to conduct tests to determine the quantity of particulate and/or gaseous matter being emitted'' and requires a source to allow access, should ANR have reason to believe that emission limits are being violated by the source, and allows ANR ''to conduct tests of [its] own to determine compliance.'' *See* 45 FR 10775 (February 19, 1980). In addition, operators of sources that emit more than five tons of any and all air contaminants per year are required to register the source with the Secretary of ANR and to submit emissions data annually, pursuant to § 5–802, Requirement for Registration, and § 5–803, Registration Procedure. *See* 60 FR 2524 (January 10, 1995).

Vermont also certifies that nothing in its SIP would preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed. *See* 40 CFR 51.212(c).

Vermont provides for correlation by VT DEC of emissions reports by sources with applicable emission limitations or standards, as required by CAA § 110(a)(2)(F)(iii). Vermont receives emissions data through its annual registration program. Currently, VT DEC analyzes a portion of these data manually to correlate a facility's reported data with permit conditions, including hours of operation, fuel usage, and annual emissions limits for both criteria emissions and hazardous air contaminant emissions. VT DEC reports that it has finished the process of setting up an integrated electronic database that merges all air contaminant source information across permitting, compliance and registration programs, so that information concerning permit conditions, annual emissions data, and compliance data are accessible in one location for a particular air contaminant source. VT DEC further reports that it is working on a database function that would automatically correlate emissions data with permit conditions and other applicable standards electronically to enable VT DEC to complete correlation more efficiently and accurately.

Regarding the section 110(a)(2)(F) requirement that the SIP ensure that the public has availability to emission reports, Vermont certified in its November 19, 2019, submittal for the 2015 ozone NAAQS that the Vermont Public Records Act, 1 V.S.A. §§ 315–320, provides for the free and open examination of public records, including emissions reports. Furthermore, 10 V.S.A. § 563 specifically provides that the ANR ''Secretary shall not withhold emissions data and emission monitoring data from public inspection or review'' and ''shall keep confidential any record or other information furnished to or obtained by the Secretary concerning an air contaminant source, *other than emissions data and emission monitoring data,* that qualifies as a trade secret pursuant to 1 V.S.A. § 317(c)(9).'' (emphasis added). EPA approved section 563 into the Vermont SIP on June 27, 2017. *See* 82 FR 29005.

Consequently, EPA proposes that Vermont 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.''

On June 27, 2017, EPA approved a Vermont SIP revision addressing the requirement that the plan provide for state authority comparable to that in section 303 of the CAA. *See* 82 FR 29005. For a detailed analysis explaining how Vermont meets this requirement, see EPA's notice of proposed rulemaking for that action. *See* 82 FR 15671, 15679 (March 30, 2017). For the reasons provided in the March 2017 notice, we are proposing to approve the state's submittal for this requirement of Section 110(a)(2)(G) with respect to the 2015 ozone NAAQS.

Section 110(a)(2)(G) also requires that Vermont have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II for certain pollutants. *See* 40 CFR 51.150, 51.152(c). In general, contingency plans for Priority I, IA, and II areas must meet the applicable requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (''Prevention of Air Pollution Emergency Episodes'') for the relevant NAAQS, if the NAAQS is covered by those regulations. Both AQCRs in Vermont are classified as Priority III for ozone, 40 CFR 52.2371, and, therefore, Vermont does not need to submit a contingency plan to implement its emergency episode authority.[35] Although not expected, if ozone conditions were to change, Vermont does have general authority, as noted previously (*i.e.,* 10 V.S.A. § 560 and 10 V.S.A. § 8009), to order a source to cease operations if it is determined that emissions from the source pose an imminent danger to human health or safety or an immediate threat of substantial harm to the environment.

In addition, as stated in Vermont's infrastructure SIP submittal under the discussion of public notification (Element J), Vermont posts near real-time air quality data, air quality predictions and a record of historical data on the VT DEC website and, when forecast or measured ozone concentrations exceed the level of the 2015 ozone NAAQS, distributes air quality alerts by email to many parties, including the media and the National Weather Service. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions and to reduce the public's exposure. In addition, daily forecasted ozone levels are also made available on the internet through the EPA AirNow and EnviroFlash systems. Information regarding these two systems is available on EPA's website at *www.airnow.gov*. Notices are sent out to EnviroFlash participants when levels are forecast to exceed the current ozone standard.

EPA proposes that Vermont meets the applicable infrastructure SIP requirements for section 110(a)(2)(G) with respect to contingency plans 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. To address this requirement, Vermont's infrastructure submittal references 10 V.S.A. § 554, which provides the Secretary of Vermont ANR with the power to ''[p]repare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution in this state'' and to ''[a]dopt, amend and repeal rules, implementing the provisions'' of Vermont's air pollution control laws set forth in 10 V.S.A. chapter 23. EPA approved 10 V.S.A. § 554 into the SIP on June 27, 2017. *See* 82 FR 29005. EPA proposes that Vermont 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 Vermont 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.

Vermont's 10 V.S.A. § 554 specifies that the Secretary of Vermont ANR shall have the power to ''[a]dvise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.'' EPA approved 10 V.S.A. § 554 into the SIP on June 27, 2017. *See* 82 FR 29005. In addition, VT APCR § 5–501(7)(c) requires VT ANR to provide notice to local governments and federal land managers of a determination by ANR to issue a draft PSD permit for a major stationary source or major modification. On August 1, 2016, EPA approved VT APCR § 5–501(7)(c) into Vermont's SIP. *See* 81 FR

[35] Classification of regions in Vermont is available at *https://www.ecfr.gov/cgi-bin/text-idx?SID=73d43a45cf13909292d606aad27c9cc6&mc=true&node=se40.5.52_12371&rgn=div8* and ozone monitor values for individual monitoring sites throughout Vermont are available at *www.epa.gov/outdoor-air-quality-data/monitor-values-report.*

50342. Therefore, EPA proposes that Vermont 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.

Vermont's 10 V.S.A. § 554 authorizes the Secretary of Vermont ANR to ''[c]ollect and disseminate information and conduct educational and training programs relating to air contamination and air pollution.'' In addition, the VT DEC Air Quality and Climate Division 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 VT DEC Air Quality and Climate Division website. Vermont is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs.

EPA proposes that Vermont 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 Vermont'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.

Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 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.

Based on the above analysis, EPA proposes that Vermont meets the infrastructure SIP requirements of sub-elements 1–3 of section 110(a)(2)(J) for the 2015 ozone NAAQS. We are not proposing action on sub-element 4 because, as noted above, it is not germane to infrastructure SIPs.

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.

In its submittal, Vermont cites to VT APCR § 5–406, Required Air Modeling, which authorizes ''[t]he Air Pollution Control Officer [to] require the owner or operator of any proposed air contaminant source . . . to conduct . . . air quality modeling and to submit an air quality impact evaluation to demonstrate that operation of the proposed source . . . will not directly or indirectly result in a violation of any ambient air quality standard, interfere with the attainment of any ambient air quality standard, or violate any applicable prevention of significant deterioration increment . . . .'' Vermont reviews the potential impact of such sources consistent with EPA's ''Guidelines on Air Quality Models'' at 40 CFR part 51, appendix W. *See* VT APCR § 5–406(2). Vermont also cites to VT APCR § 5–502, Major Stationary Sources and Major Modifications, which requires the submittal of an air quality impact evaluation or air quality modeling to ANR to demonstrate impacts of new and modified major sources, in accordance with VT APCR § 5–406. The modeling data are sent to EPA along with the draft major permit. As a result, 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.

The state 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 and PM, if necessary. EPA proposes that Vermont 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.

Vermont state law requires application fees for construction or modification permits for major stationary sources, 10 V.S.A. § 556; VT APCR § 5–504, and sets forth fee amounts, 3 V.S.A. § 2822(j)(1)(A)(ii)(I). State law also requires major stationary sources to pay annual registration renewal fees. *Id.* § 2822(j)(1)(B); VT APCR §§ 5–802, 5–806. Moreover, EPA fully approved Vermont's Title V permit program, *see* VT APCR subchapter X, on November 29, 2001. *See* 66 FR 59535; *see also* 40 CFR part 70, appendix A. To gain this approval, Vermont demonstrated that the annual fees required of Title V sources (which includes major stationary sources) under State law are sufficient to cover the costs of reviewing, approving, implementing, and enforcing the permits. *See* 61 FR 26145 (May 24, 1996).

Therefore, EPA proposes that Vermont 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. Vermont's infrastructure submittal references 10 V.S.A. § 554, which was approved into the VT SIP on June 27, 2017. *See* 82 FR 29005. This statute authorizes the Secretary of Vermont ANR to ''[a]dvise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government,

and with interested persons or groups.'' In addition, VT APCR § 5–501(7) provides for notification to local officials and agencies about the opportunity for participating in permitting determinations for the construction or modification of major sources. EPA proposes that Vermont meets the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2015 ozone NAAQS.

N. Vermont Executive Order Submitted for Incorporation Into the SIP

Vermont's November 19, 2019, infrastructure SIP submittal for the 2015 ozone NAAQS included State of Vermont Executive Order (E.O.) 19–17, *Executive Code of Ethics.* As requested by Vermont, EPA is proposing to approve E.O. 19–17 into the Vermont SIP and, because E.O. 19–17 supersedes and replaces E.O. 09–11, to remove E.O. 09–11 from the Vermont SIP.

III. Proposed Action.

EPA is proposing to approve the elements of the infrastructure SIP submitted by Vermont on November 19, 2019, for the 2015 ozone NAAQS. Specifically, EPA's proposed action regarding each infrastructure SIP requirement is contained in Table 1 below.

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

Element	2015 Ozone
(A): Emission limits and other control measures.	A
(B): Ambient air quality monitoring and data system.	A
(C)1: Enforcement of SIP measures.	A
(C)2: PSD program for major sources and major modifications.	A
(C)3: PSD program for minor sources and minor modifications.	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS.	A
(D)2: PSD	A
(D)3: Visibility Protection	A
(D)4: Interstate Pollution Abatement.	A
(D)5: International Pollution Abatement.	A
(E)1: Adequate resources	A
(E)2: State boards	A
(E)3: Necessary assurances with respect to local agencies.	NA
(F): Stationary source monitoring system.	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D.	+
(J)1: Consultation with government officials.	A
(J)2: Public notification	A
(J)3: PSD	A
(J)4: Visibility protection	+
(K): Air quality modeling and data.	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities.	A

In the above table, the key is as follows:

A	Approve
NA	Not applicable
+	Not germane to infrastructure SIPs

In addition, EPA is proposing to approve, and incorporate into the Vermont SIP, the following Executive Order, which was included for approval in Vermont's infrastructure SIP submittal:

State of Vermont Executive Order No. 19–17, Executive Code of Ethics, effective December 4, 2017.

EPA is also proposing to remove State of Vermont Executive Order No. 09–11, *Executive Code of Ethics,* which has been superseded and replaced by Executive Order No. 19–17.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to 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 the Vermont executive order regarding the State's executive code of ethics discussed in Section II of this preamble. 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: March 24, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

[FR Doc. 2020–06659 Filed 3–31–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2019–0614; FRL–10004–51]

RIN 2070–AB27

Modification of Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the significant new use rules (SNURs) for chemical substances, which were the subject of a premanufacture notice (PMN) and a significant new use notice (SNUN). This action would amend the SNURs to allow certain new uses reported in the SNUNs without additional notification requirements and modify the significant new use notification requirements based on the actions and determinations for the SNUN submissions. EPA is proposing this amendment based on review of new and existing data for the chemical substances.

DATES: Comments must be received on or before May 1, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0614, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8974; email address: *moss.kenneth@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.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of the chemical substance (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This proposed rule may affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28 and must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to a SNUR must certify their compliance with the SNUR requirements. Any person who exports or intends to export the chemical substance that is the subject of a final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What action is the Agency taking?

EPA is proposing amendments to the SNURs for chemical substances in 40 CFR part 721, subpart E. A SNUR for a chemical substance designates certain activities as a significant new use. Persons who intend to manufacture or process the chemical substance for the significant new use must notify EPA at least 90 days before commencing that activity. The required notification would initiate EPA's evaluation of the intended use within the applicable review period. Manufacture and processing for the significant new use would be unable to commence until EPA conducted a review of the notice, made an appropriate determination on the notice, and took such actions as are required with that determination.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make