

additional period(s) of no more than 30 days in accordance with this section. VA will not provide per diem if VA determines that a veteran was provided adult day health care in a facility that does not meet the standards set forth in paragraph (c)(1) of this section, and VA may recover all per diem payments made for the care of the veteran in that facility.

(e) *Approval of response.* Per diem payments will not be made under this section unless and until the director of the VAMC determines, or the director of the VISN in which the State home is located (if the VAMC director is not capable of doing so) determines, that an emergency exists and that the evacuation facility meets VA standards set forth in paragraph (c)(1) of this section.

(Authority 38 U.S.C. 501, 1720, 1742)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2008-0639; EPA-R01-OAR-2008-0641; EPA-R01-OAR-2008-0642; EPA-R01-OAR-2008-0643; A-1-FRL-9285-5]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut, Maine, New Hampshire and Rhode Island; Infrastructure SIPs for the 1997 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve submittals from the States of Connecticut, Maine, New Hampshire and Rhode Island. These submittals outline how each state's State Implementation Plan (SIP) meets the requirements of section 110(a) of the Clean Air Act (CAA) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA. This SIP is commonly referred to as an infrastructure SIP. These actions are being taken under the Clean Air Act.

DATES: Written comments must be received on or before April 22, 2011.

ADDRESSES: Submit your comments, identified by EPA-R01-OAR-2008-0639 for comments pertaining to our

proposed action for Connecticut, EPA-R01-OAR-2008-0641 for comments pertaining to our proposed action for Maine, EPA-R01-OAR-2008-06432 for comments pertaining to our proposed action for New Hampshire, or EPA-R01-OAR-2008-0643 for comments pertaining to our proposed action for Rhode Island, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* arnold.anne@epa.gov.

3. *Fax:* (617) 918-0047.

4. *Mail:* "Docket Identification Number EPA-R01-OAR-2008-0639, EPA-R01-OAR-2008-0641, EPA-R01-OAR-2008-0642, or EPA-R01-OAR-2008-0643" Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912.

5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID Numbers: EPA-R01-OAR-2008-0639 for comments pertaining to our proposed action for Connecticut, EPA-R01-OAR-2008-0641 for comments pertaining to our proposed action for Maine, EPA-R01-OAR-2008-0642 for comments pertaining to our proposed action for New Hampshire or EPA-R01-OAR-2008-0643 for comments pertaining to our proposed action for Rhode Island. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov>, or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [http://](http://www.regulations.gov)

www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, telephone number (617) 918-1664, fax number (617) 918-0664, e-mail Burkhart.Richard@epa.gov.

In addition, copies of the state submittal and EPA's technical support documents are also available for public inspection during normal business hours, by appointment at the respective State Air Agency: The Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630; the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017; Air Resources Division, Department of Environmental Services,

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095; and the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908-5767.

SUPPLEMENTARY INFORMATION:

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

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

- I. What action is EPA taking?
- II. What is the background for this action?
- III. What is EPA’s evaluation of the States’ submittals?
 - A. Emission Limits and Other Control Measures
 - B. Ambient Air Quality Monitoring/Data System
 - C. Program for Enforcement of Control Measures
 - D. Interstate Transport
 - E. Adequate Resources
 - F. Stationary Source Monitoring System
 - G. Emergency Power
 - H. Future SIP Revisions
 - I. Nonattainment Area Plan Under Part D
 - J. Consultation With Government Officials; Public Notification; PSD; and Visibility Protection
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 - L. Permitting Fees
 - M. Consultation/Participation by Affected Local Entities
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is proposing to approve submittals from the States of Connecticut, Maine, New Hampshire and Rhode Island as meeting the Section 110(a) infrastructure requirements of the Clean Air Act for the 1997 ozone standard.

II. What is the background for this action?

On July 18, 1997, EPA promulgated a revised National Ambient Air Quality Standard (NAAQS) for ozone based on 8-hour average ozone concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (see 62 FR 38856). The Clean Air Act (CAA or Act) requires State Implementation Plans (SIPs) meeting the requirements of sections 110(a)(1) and (2) be submitted by states within 3 years after promulgation of a new or revised standard. 42 U.S.C. 7410(a)(1) and (2). Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called “infrastructure”

requirements. States were required to submit such SIPs for the 1997 standards to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone standards created uncertainty about how to proceed, and certain States did not provide the required infrastructure SIP submission for this newly promulgated standard.

Section 110(a) imposes the obligation upon States to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the State develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the State’s existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, States typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards.

On October 2, 2007, EPA issued a 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.” This guidance noted that to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.

The States of Connecticut, Maine, New Hampshire, and Rhode Island each submitted such certification letters to EPA on December 28, 2007, January 3, 2008, December 14, 2007 and December 14, 2007, respectively. All four submittals were deemed complete, effective April 28, 2008. (See 73 FR 16205; March 27, 2008.)

III. What is EPA’s evaluation of the States’ submittals?

EPA has reviewed the December 2007 submittal from Connecticut, the January 2008 submittal from Maine, the December 2007 submittal from New Hampshire, and the December 2007 submittal from Rhode Island. The Agency has determined that each state’s SIP meets the section 110(a)(2) infrastructure requirements of the CAA and is consistent with the relevant EPA guidance. Each state’s submittal and EPA’s evaluation of that submittal are detailed in the following technical support documents (TSDs) which are available in the docket for these actions and at the EPA New England Regional Office referenced in the **ADDRESSES** section: (1) “Technical Support Document (TSD) for the Connecticut

Submittal to Fulfill the Requirements for 1997 8-hour Ozone National Ambient Air Quality Standard Infrastructure Portion of the Clean Air Act Under Section 110(a)(2),” dated March 9, 2011; (2) “Technical Support Document (TSD) for the Maine Submittal to Fulfill the Requirements for 1997 8-hour Ozone National Ambient Air Quality Standard Infrastructure Portion of the Clean Air Act Under Section 110(a)(2),” dated March 10, 2011; (3) “Technical Support Document (TSD) for the New Hampshire Submittal to Fulfill the Requirements for 1997 8-hour Ozone National Ambient Air Quality Standard Infrastructure Portion of the Clean Air Act Under Section 110(a)(2),” dated March 10, 2011; and (4) “Technical Support Document (TSD) for the Rhode Island Submittal to Fulfill the Requirements for 1997 8-hour Ozone National Ambient Air Quality Standard Infrastructure Portion of the Clean Air Act Under Section 110(a)(2),” dated March 9, 2011.

In their submittals each state references items in their state specific laws, statutes, regulations and SIPs that address the elements detailed in section 110(a)(2) of the CAA. These elements and the corresponding subsection of the CAA are as follows:

Emission limits and other control measures (110(a)(2)(A));
 Ambient air quality monitoring/data system (110(a)(2)(B));
 Program for enforcement of control measures (110(a)(2)(C));
 Interstate Transport (110(a)(2)(D)(ii));
 Adequate resources (110(a)(2)(E));
 Stationary source monitoring system (110(a)(2)(F));
 Emergency power (110(a)(2)(G));
 Future SIP revisions (110(a)(2)(H));
 Consultation with government officials (110(a)(2)(J));
 Public notification (110(a)(2)(J));
 Prevention of significant deterioration (110(a)(2)(J));
 Air quality modeling data (110(a)(2)(K));
 Permitting fees (110(a)(2)(L)); and
 Consultation/participation by affected local entities (110(a)(2)(M)).

In its submittal, Connecticut references the Connecticut Air Quality SIP, the Connecticut General Statutes (CGS) and the Regulations of the Connecticut State Air Agency (RCSA). In its submittal, Maine references the Maine Air Quality SIP, the Code of Maine Regulations (CMR) and the Maine Revised Statutes Annotated (MRSA). In its submittal, New Hampshire references the New Hampshire Air Quality SIP, the New Hampshire Revised Statutes Annotated (RSA) as well as the New

Hampshire Rules Governing the Control of Air Pollution, and NH Admin. Rules Env-A 100 et seq. In its submittal, Rhode Island references the Rhode Island Air Quality SIP, the Rhode Island Air Pollution Control Regulations (RIAPCR) and the Rhode Island General Laws (RIGL).

The discussion below summarizes how each state meets each relevant CAA infrastructure requirement outlined above.

A. Emission Limits and Other Control Measures

Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters. Each state's infrastructure submittal includes a list of regulations that have been previously adopted by the state and approved by EPA which include specific emission limits and the framework for implementation of these limits. The specific details of each state's submittal and EPA analysis of the submittal for this element is stated in the TSD for each state. Also, a table containing each regulation and the citation of EPA's approval of this regulation is included in the Appendix of each state's TSD.

EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Connecticut, Maine, New Hampshire, and Rhode Island have included some SIP provisions originally submitted in response to part D in its submission documenting its compliance with the infrastructure requirements of section 110(a)(2). These states have over time continually updated the elements of their SIPs addressing the ozone NAAQS, and the provisions reviewed here are a weave of SIP revisions submitted in response to the infrastructure requirements of section 110(a)(2) and the nonattainment requirements of part D.

For the purposes of this action, EPA is reviewing any rules originally submitted in response to part D solely for the purposes of determining whether they support a finding that the state has met the basic infrastructure requirements under section 110(a)(2). For example, in response to the requirement to have enforceable emission limits under section 110(a)(2)(A), Connecticut, Maine, New Hampshire, and Rhode Island cited to several rules that were submitted to meet the Reasonably Available Control Technology (RACT) requirement of part

D. EPA is here approving those rules as meeting the requirement to have enforceable emission limits on ozone precursors; any judgment about whether those emission limits discharge the state's obligation to impose RACT under part D was or will be made separately, in an action reviewing those rules pursuant to the requirements of part D.

Also, in this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. EPA believes that a number of states may have SSM provisions that are contrary to the CAA and existing EPA guidance,¹ and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

In addition, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states may have such provisions that are contrary to the CAA and existing EPA guidance (52 FR 45109, November 24, 1987), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision that is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

The Connecticut submittal cites 16 specific rules the state adopted to control the emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x). In addition the State of Connecticut has also adopted the California-Low Emission Vehicle standard for automobiles.

The Maine submittal cites over 20 specific rules the state adopted to control the emissions of VOCs and NO_x.

The New Hampshire submittal cites a general overview of the RSA, Chapters: Env-A 300, 600, 700, 1200, and 3200 of their air quality regulations, and five specific rules for the control the emissions of VOCs and NO_x. In addition, they also cite several rules for the control of control the emissions of VOCs and NO_x from automobiles.

¹ Memorandum to EPA Air Division Directors, from Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (August 11, 1999).

The Rhode Island submittal cites 15 specific rules the state adopted to control the emissions of VOCs and NO_x.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(A) for the 1997 8-hour ozone standard.

B. Ambient Air Quality Monitoring/Data System

Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. Connecticut, Maine, New Hampshire and Rhode Island all operate ambient air quality monitors and submit the data collected to EPA. All four states have submitted annual air monitoring network plans which have been approved by EPA as follows: Connecticut (submitted on August 16, 2010, approved by EPA on August 31, 2010); Maine (submitted on June 30, 2010, approved by EPA on July 7, 2010); New Hampshire (submitted on September 7, 2010, approved by EPA on October 13, 2010); and Rhode Island (submitted on July 12, 2010, approved by EPA on July 13, 2010).

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(B) for the 1997 8-hour ozone standard.

C. Program for Enforcement of Control Measures

Section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) requirements.

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

Also, in this action, EPA is not proposing to approve or disapprove any state rules with regard to the NSR Reform requirements. EPA will act on SIP submittals that are made for purposes of addressing NSR Reform through a separate rulemaking process.

EPA has determined that Connecticut's, Maine's, New Hampshire's, and Rhode Island's minor NSR programs adopted pursuant to

section 110(a)(2)(C) of the Act regulate ozone precursor emissions. EPA is concerned that certain provisions of some states' minor NSR programs adopted pursuant to section 110(a)(2)(C) of the Act might not meet all the requirements found in EPA's regulations implementing that provision. See 40 CFR 51.160–51.164. EPA previously approved all four states minor NSR programs into the SIP, and there was at the time no objection to the provisions of these programs. For Connecticut, 58 FR 10987 (Feb. 23, 1993); for Maine, 45 FR 6786 (Jan. 30, 1980); for New Hampshire, 51 FR 10863 (March 15, 1983); and for Rhode Island, 48 FR 29690, (June 28, 1983). Since then, the states and EPA have relied on the existing state minor NSR programs to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

Therefore, in this action, EPA is proposing to approve Connecticut's, Maine's, New Hampshire's, and Rhode Island's infrastructure SIP for the 1997 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the state's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

As further discussed in the TSDs, and each states's respective submittal, each state cites specific sections of their rules and regulations that show how the state meets the requirements for this element.

The Connecticut submittal cites several sections of the CGS (see CGS Sections 22a–171, 22a–174, 22a–175, 22a–176 and 22a–178)) and several

regulations of the RSCA (see RSCA 22a–174–3a and RSCA 22a–174–12), including a program to meet minor source NSR and PSD requirements. Connecticut's 110 submittal meets the requirements of CAA Section 110(a)(2)(C), with the following exception which is currently being addressed. EPA previously noted that Connecticut's PSD program had a deficiency because the state did not have the authority to implement the PSD permitting program with respect to greenhouse gas (GHG) emissions. (See 75 FR 77698; December 13, 2010.) Connecticut proposed rule revisions to address this deficiency and EPA proposed approval of those revisions through parallel processing procedures on January 6, 2011 (76 FR 752). On February 9, 2011, Connecticut submitted a final SIP revision addressing this deficiency. Final approval of Connecticut's GHG SIP revision is expected prior to final approval of Connecticut's section 110 infrastructure submittal. Therefore, EPA is proposing to fully approve this element for Connecticut.

The Maine submittal cites 38 MRSA § 347–A and C, § 348, and § 349 which provides the Maine DEP with civil and criminal enforcement authorities, including the authority to assess penalties. In addition Maine cites, CMR Chapter 100 Definitions and Regulations and CMR Chapter 115 Emission License Regulation, which contains the regulations for minor source NSR and PSD programs. Maine's submittal meets the requirements of CAA section 110(a)(2)(C). EPA previously noted that there was a deficiency in Maine's PSD program because the state does not have adequate resources to implement the PSD permitting program with respect to GHG emissions. (See 75 FR 82536, December 30, 2010). Maine DEP has adopted revisions to its program to address this deficiency, but has not yet submitted these rules to EPA. In that same December 30, 2010 action, EPA issued a SIP error correction withdrawing EPA's approval of Maine's PSD program to the extent it applies to increases in GHG emissions below the thresholds in EPA's tailoring rule revisions to the federal PSD program in the so-called "narrowing rule." Ibid. On March 10, 2011, Maine submitted a letter to EPA stating that in evaluating its section 110 infrastructure submittal, EPA should consider the state's PSD program as currently approved in the SIP and as corrected by EPA's December 30, 2010 narrowing rule. Therefore, EPA is proposing to fully approve this element for Maine for the purposes of

meeting the infrastructure requirements of section 110(a)(2)(C). EPA will address how the state's newly adopted PSD rules implement GHG requirements in a separate action.

The New Hampshire submittal cites the RSA and ENV–A (see RSA 125–C:4, 125–C:11, and 125–C:15, and ENV–A 618 and ENVA–619), including a program for the minor source NSR and PSD programs. New Hampshire's submittal meets the requirements of CAA section 110(a)(2)(C). EPA previously noted that there was a deficiency in New Hampshire's PSD program because the state does not have adequate resources to implement the PSD permitting program with respect to GHG emissions. 75 FR 82536 (December 30, 2010). New Hampshire submitted a SIP revision to its program to address this deficiency on February 7, 2011. EPA is reviewing this submittal. On March 8, 2011, New Hampshire submitted a letter to EPA stating that in evaluating its section 110 infrastructure submittal, EPA should consider the revised rules. Therefore, EPA is proposing to fully approve this element for New Hampshire for the purposes of meeting the infrastructure requirements of section 110(a)(2)(C). EPA will address how the state's newly adopted PSD rules implement GHG requirements in a separate action.

The Rhode Island submittal cites sections 23–23–10, 23–23–11 and 23–23–14 of the RIGL, which provide DEM with civil and criminal enforcement authorities, including the authority to assess penalties. In addition, RI APCR No. 9 Air Pollution Control Permits, which has been approved into the RI SIP, includes the requirements to implement the PSD permitting program and includes the minor source NSR provisions. Rhode Island's submittal meets the requirements of CAA section 110(a)(2)(C). EPA previously noted that there was a deficiency in Rhode Island's PSD program, because the state does not have adequate resources to implement the PSD permitting program with respect to GHG emissions. 75 FR 82536 (Dec. 30, 2010). Rhode Island DEM submitted a SIP revision to its program to address this deficiency on January 18, 2011. On March 3, 2011, Rhode Island submitted a letter to EPA stating that in evaluating its section 110 infrastructure submittal, EPA should consider the revised rules. Therefore, EPA is proposing to fully approve this element for Rhode Island for the purposes of meeting the infrastructure requirements of section 110(a)(2)(C). EPA will address how the state's newly adopted PSD rules implement GHG requirements in a separate action.

D. Interstate Transport

Section 110(a)(2)(D)(i) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. This action does not address the requirements of 110(a)(2)(D)(i), which have been addressed by a separate finding issued by EPA on April 25, 2005 (70 FR 21147).

Section 110(a)(2)(D)(ii) of the CAA requires SIPs to include provisions insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source

Connecticut's PSD regulations provide for notice to most of the parties consistent with the requirements in the EPA PSD program, although there is no specific mandate that affected states receive notice. Connecticut in fact issues extensive notice of its draft permits, and neighboring states consistently get copied on those drafts. Connecticut has no pending obligations under section 115 or 126(b) of the Act. The CT DEP procedures meet the requirements of CAA Section 110(a)(2)(D)(ii).

Maine is required to give notice of draft PSD permits that meet the requirements in our regulations. Maine's SIP-approved Chapter 115 requires the state to provide a "copy of the public notification and a copy of the draft order to the U.S. Environmental Protection Agency, Region I, the chief executives of the municipality and county where the source proposes to locate, any comprehensive land use planning agency, and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification." Maine also has no pending obligations under section 115 or 126(b) of the Act. Maine's SIP meets the requirements of CAA section 110(a)(2)(D)(ii).

New Hampshire is required to give notice of draft PSD permits that meet the requirements in our regulations. New Hampshire specifically defers to 40 CFR part 52 for the process by which PSD permits are issued. Env-A 205.03. 40 CFR part 52 effectively incorporates the requirements of 40 CFR Part 124—

which include affected state notice. 40 CFR 124.10(c)(1)(iii), (vii) & (x). New Hampshire has no pending obligations under section 115 or 126(b) of the Act. New Hampshire SIP meets the requirements of CAA section 110(a)(2)(D)(ii).

Rhode Island's Air Pollution Control Regulation No. 9, "Air Pollution Control Permits," which has been approved into the RI SIP provides for notice to nearby States. (See 9.12.3.) Rhode Island has no pending obligations under section 115 or 126(b) of the Act. Rhode Island's SIP meets the requirements of CAA section 110(a)(2)(D)(ii).

E. Adequate Resources

Section 110(a)(2)(E) requires states to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP and related issues.

As further explained in each state's TSD and respective submittal, each state cites specific sections of their rules and regulations that show how the state meets the requirements for this element.

Connecticut cites its state law (*see* CGS Section 22a-171) and its SIP, Chapter 11, Parts A-E which describe the (A) existing organizations, (B) manpower, (C) funding, (D) physical resources and (E) local agencies. It states, in part, "The Department of Environmental Protection will secure appropriations sufficient, in conjunction with federal assistance, to maintain the projected state funding levels."

Maine cites its state law (*see* 38 MRSA § 341-A, 38 MRSA § 341-D 38 MRSA § 342 and 38 MRSA § 581) and its original 1972 SIP Chapter 8, documenting the existence of adequate resources. For FY 2007 (the year cited in its submittal), the Maine Bureau of Air Quality had a staff of 59, and a budget of \$5.5 million.

New Hampshire cites the RSA 125 C:6, which authorizes the NHDES Commissioner to enforce the state's air laws, establish a permit program, accept and administer grants, and exercise all incidental powers necessary to carry out the law, and RSA 125 C:12, which authorizes the Commissioner to collect fees to recover the costs of reviewing and acting upon permit applications. In addition New Hampshire cites its original 1972 SIP which describes the (A) existing organizations; (B) manpower; (C) funding; and (D) physical resources.

Rhode Island cites § 23-23-5 of the RIGL which provides the Director of DEM with the legal authority to enforce air pollution control requirement, and § 23-23-5 of the RIGL which provides for the assessment of operating permit

fees from air emissions sources, allows for DEM to assess preconstruction permit fees and establishes a general revenue reserve account within the general fund to finance the state clean air programs. In addition, RI DEM referred to its regulations implementing its operating permit program pursuant to 40 CFR part 70. RI APCR No. 28, "Operating Permit Fees," requires major sources to pay annual operating permit fees. Finally, Section III of the 1972 RI SIP specifies the RI DEM's legal authority to implement SIP measures and Section VII of the 1972 SIP describes the resources and manpower estimates for the RI DEM.

As discussed above, EPA has previously determined that Maine, New Hampshire, and Rhode Island would not have adequate resources to implement the PSD permitting program with respect to GHG emissions without adopting rules to limit the number of GHG sources that require PSD permits. A complete discussion of this issue is provided above in Section III.C. of this rule. All three state environmental agencies adopted programs to address this deficiency. Therefore, EPA is proposing to fully approve this element.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(E) for the 1997 8-hour ozone standard.

F. Stationary Source Monitoring System

Section 110(a)(2)(F) of the CAA requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. Connecticut's, Maine's, New Hampshire's, and Rhode Island's infrastructure submittals reference the specific regulations that were previously adopted by the state and approved by EPA which require sources to monitor emissions and submit reports. The specific rules, along with a citation to EPA's approval of each rule, is included in the TSD for each state. For example, Rhode Island's submittal references the following: (1) APCR No. 9, "Air Pollution Control Permits," which requires emissions testing of permitted processes within 60 days of full operation and specifies that preconstruction permits issued contain an emissions testing section; (2) APCR No. 14, "Record Keeping and Reporting," which requires emission sources to report annually emissions and other data to RI DEM; and (3) APCR No. 27, "Control of Nitrogen Oxide Emissions," which requires annual emissions testing of subject sources and includes specifications for continuous emissions monitors. As detailed in the TSD's, similar rules and regulations

have been adopted by Connecticut, Maine, and New Hampshire.

Connecticut, Maine, New Hampshire, and Rhode Island all meet the requirements for Section 110(a)(2)(F) for the 1997 8-hour ozone standard.

G. Emergency Power

Section 110(a)(2)(G) of the CAA requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. Connecticut's, Maine's, New Hampshire's, and Rhode Island's infrastructure submittals reference the specific state legislation that gives each state authority to order a source to cease operations if it is determined that emissions from the source pose an immediate danger to public health or safety. In addition, Connecticut, Maine, and Rhode Island have adopted emergency episode regulations, consistent with the requirements of 40 CFR part 51, subpart H, sections 51.150 through 51.153, which have been previously approved by EPA. (See TSDs for state regulation and EPA approval citations.)

New Hampshire has broad statutory authority (see RSA 125-C:9 Authority of the Commissioner in Cases of Emergency) to address activities causing imminent and substantial endangerment to public health; however, New Hampshire does not have regulations that specifically address all the 40 CFR part 51 subpart H requirements. But New Hampshire, as a matter of practice, does the following in response to elevated ozone levels. Through the EPA AIRNOW and EPA ENVIROFLASH systems, the New Hampshire DES posts on the internet forecasted ozone levels statewide for each day. Notices are sent out to ENVIROFLASH participants when levels are forecast to exceed the current 8-hour ozone standard. In addition, when levels are expected to exceed the ozone standard in New Hampshire, the media are alerted, through a press release, and the National Weather Service is alerted to issue an Air Quality Advisory through the normal National Weather Service weather alert system. This is similar to the notification and communication requirements of 40 CFR 151.152. Therefore, EPA is proposing to fully approve this element for New Hampshire.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(G) for the 1997 8-hour ozone standard.

H. Future SIP Revisions

Section 110(a)(2)(H) of the CAA requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining NAAQS, or in response to an EPA finding that the SIP is substantially inadequate. Connecticut's infrastructure submittal references the SIP and CGS which requires the SIP to be a dynamic and not static document that is to be revised as necessary. Maine's infrastructure submittal references the MRSA, which requires, the adoption, amendment or repeal of reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the environmental department is charged with administering. New Hampshire's infrastructure submittal references, RSA 125-C:6 Powers and Duties of the Commissioner, which requires the Commissioner to develop "a comprehensive program and provide services for the study, prevention and abatement of air pollution." Rhode Island's infrastructure submittal references, § 23-23-5 of the RIGL, which allows the Director of RI DEM to "make, issue, and amend rules and regulations * * * for the prevention, control, abatement, and limitation of air pollution." In addition, it should be noted that all four states have made numerous SIP revisions for both the previous 1-hour ozone standard and the 1997 8-hour ozone NAAQS.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(H) for the 1997 8-hour ozone standard.

I. Nonattainment Area Plan Under Part D

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

J. Consultation With Government Officials; Public Notification; PSD; and Visibility Protection

Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to Section 121 relating to consultation.

Connecticut's infrastructure submittal references CGS Section 22a-171, Duties of Commissioner of Environmental Protection, which requires the commissioner to "advise and consult with agencies of the United States, agencies of the state, political subdivisions and industries and any other affected groups in furtherance of the purposes of this chapter." In addition Connecticut has a State Implementation Plan Revision Advisory Committee (SIPRAC) which was established in 1972, and generally meets each month in Hartford. The meeting notices are posted on the CT DEP Web site and the agenda is also available on the Web site. The SIPRAC committee discusses relevant air quality issues, such as air quality permits, state and national regulation revisions and SIP changes.

Maine's infrastructure submittal references the MRSA and CMR. Specifically 06-096 CMR Chapter 115 Major and Minor Source Air Emission License Regulations, Section 4A(d) establishes consultation requirements with Federal Land Managers for NSR and PSD, which requires, "The applicant and/or the Department shall notify and provide a copy of the application to all Federal Land Managers listed in Chapter 100 of the Department's regulations, and the Indian governing body of any reservation located within 50 km of any Major Modification or new Major source on or before the date the applicant provides Notice of Intent to File to the public, and provide at least a thirty (30) days public comment period."

New Hampshire's infrastructure submittal references state laws and regulations, specifically, RSA 125-C:6 Powers and Duties of the Commissioner, which requires: Consulting, and cooperating with the cities and towns and other agencies of the state, federal government, interstate agencies, and other affected agencies or groups in matters relating to air quality; encouraging local units to promote cooperation by the people, political subdivisions, industries, and others in preventing and controlling air pollution and coordinating and regulating the air pollution control programs of political

subdivisions of the state and entering agreements with said subdivisions to plan or implement programs for the control and abatement of air pollution.

Rhode Island's submittal references § 23–23–5 of the RIGL which specifies that the RI DEM Director shall “advise and consult with agencies of the United States, agencies of the state, political subdivisions and industries and any other affected groups in furtherance of the purposes of this chapter.”

Section 110(a)(2)(j) of the CAA further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Connecticut, Maine, New Hampshire, and Rhode Island are all state partners participating in EPA's AIRNOW and EnviroFlash Air Quality Alert programs. See <http://www.airnow.gov>. Through this program, states provide near real-time air quality data, as well as next day forecasts, to the public. Individuals and organizations may also sign up to receive e-mail alerts when poor air quality is predicted in their area.

Section 110(a)(2)(j) of the CAA also requires states to meet applicable requirements of Part C related to prevention of significant deterioration and visibility protection. With regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes CAA sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(j) when a new NAAQS becomes effective. We are, however, evaluating the infrastructure submittals with respect to the applicable PSD program requirements under 110(a)(2)(C). A complete discussion of this issue is provided above in Section III.C. of this rule.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(j) for the 1997 8-hour ozone standard.

K. Air Quality Modeling/Data

Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

As further explained in each state's TSD, all four states reference the relative

portions of their laws, regulations and SIPs that require modeling from new or modified sources of air pollution, and the general authority for the state to conduct air quality analyses.

Connecticut, New Hampshire and Rhode Island have submitted 8-hour ozone attainment demonstrations to EPA as required under the CAA for ozone nonattainment areas classified moderate and above. Maine was not required to submit an 8-hour ozone attainment demonstration, because the nonattainment areas in Maine were not classified as moderate or higher. In addition, all four states are members of and participate in the ozone attainment demonstration modeling efforts conducted by the Ozone Transport Commission.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(K) for the 1997 8-hour ozone standard.

L. Permitting Fees

Section 110(a)(2)(L) of the CAA requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit until such fee requirements are superseded by EPA's approval of a title V operating permit program with a fee program consistent with the Act. None of these states' title V operating permit programs is formally approved into the state's SIP. However, the operating permit program is a legal mechanism the state can use to ensure that it has sufficient resources to support the air program, consistent with the requirements of section 110(a)(2)(L).

EPA's full approval of Connecticut's title V program became effective on May 31, 2002. Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Connecticut's title V program included a demonstration the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). Connecticut collects sufficient fees to administer the title V permit program.

EPA's full approval of Maine's title V program became effective on December 17, 2001. Before EPA can grant full approval, the state must demonstrate the ability to collect adequate fees. On October 23, 1995, Maine submitted a detailed fee demonstration in accordance with 40 CFR 70.9. The detailed fee demonstration was part of EPA's full approval. Maine collects adequate fees for Title V sources. The statute also allows the state to collect fees from new Title V sources, which

meets the requirements of section 110(a)(2)(L).

EPA's full approval of New Hampshire's title V program became effective on November 23, 2001. Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. New Hampshire's title V program included a demonstration the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). New Hampshire collects sufficient fees to administer the title V permit program.

EPA's full approval of Rhode Island's title V program became effective on November 30, 2001. Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Rhode Island's title V program included a demonstration the state will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). Rhode Island collects sufficient fees to administer the title V permit program.

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(L) for the 1997 8-hour ozone standard.

M. Consultation/Participation by Affected Local Entities

Section 110(a)(2)(M) of the CAA requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. The Connecticut infrastructure submittal references state law (*see* CGS Section 4–168) and Chapter 12 of the original 1972 Connecticut SIP, which require consultation and coordination with local entities. In addition, the Connecticut State Implementation Plan Revision Advisory Committee (SIPRAC) established in 1972 generally meets each month in Hartford. The meeting notices are posted on the Connecticut DEP Web site and the agenda is also available on the Web site. SIPRAC discusses relevant air pollution issues and regulations with all interested parties, including EPA. Maine's infrastructure submittal references state law (*see* 5 MRSA Chapter 375, Subchapter 2 and 38 MRSA § 597) and Chapter 9 of the original 1972 SIP, which requires consultation and coordination with local entities. New Hampshire's infrastructure submittal references state regulations (*see* RSA 125–C:6 Powers and Duties of the Commissioner), which requires consultation and coordination with local entities. Rhode Island's infrastructure submittal references

section 23–23–5 of the RIGL which provides for the RI DEM Director “to advise, consult, and cooperate with the cities and towns and other agencies of the State, Federal government, and other states and interstate agencies * * *

Connecticut, Maine, New Hampshire and Rhode Island all meet the requirements for Section 110(a)(2)(M) for the 1997 8-hour ozone standard.

IV. Proposed Action

EPA is proposing to find that the current SIPs for the States of Connecticut, Maine, New Hampshire and Rhode Island meet the infrastructure elements and the corresponding subsection of the CAA listed below for the 1997 8-hour ozone standard:

- Emission limits and other control measures (110(a)(2)(A));
- Ambient air quality monitoring/data system (110(a)(2)(B));
- Program for enforcement of control measures (110(a)(2)(C));
- Interstate Transport (110(a)(2)(D)(ii));
- Adequate resources (110(a)(2)(E));
- Stationary source monitoring system (110(a)(2)(F));
- Emergency power (110(a)(2)(G));
- Future SIP revisions (110(a)(2)(H));
- Consultation with government officials (110(a)(2)(I));
- Public notification (110(a)(2)(J));
- Prevention of significant deterioration (110(a)(2)(J));
- Air quality modeling data (110(a)(2)(K));
- Permitting fees (110(a)(2)(L)); and
- Consultation/participation by affected local entities (110(a)(2)(M)).

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **ADDRESSES** section of this **Federal Register**.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this action and if that provision may be severed from the remainder of the action, EPA may adopt as final those provisions that are not the subject of an adverse comment. In addition, EPA may take final action on one or more of these state’s submittals separately, depending on the circumstances involved with each state’s submittal.

IV. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct

costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: March 15, 2011.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 2011–6870 Filed 3–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0315, FRL–9285–6]

Approval and Promulgation of Implementation Plans; Washington: Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to correct errors in the State Implementation Plan (SIP) for the State of Washington regarding the scope of certain regulations incorporated by reference into the SIP. This correction would limit the applicability of certain regulations to pollutants for which National Ambient Air Quality Standards (NAAQS) have been established and precursors to those NAAQS pollutants. It would thus ensure that these regulations are reasonably related to attainment or maintenance of the NAAQS in Washington.

DATES: Comments must be received on or before April 22, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2011–0315, by any of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* R10-

Public Comments@epa.gov.

- *Mail:* Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Kristin