EPA-APPROVED KANSAS SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit or case No.	State effective date	EPA approval date	Explanation
* *	*	*	* *	*
(5) Exide Technologies	1690035	8/18/14	2/29/16 *[Insert **Federal Register** citation]*	
* *	*	*	* *	*

* * * * *

(e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* *	*	*	* *	*
(43) Attainment plan for 2008 lead NAAQS.	Salina	2/3/15	2/29/16 *[Insert **Federal Register** citation].*	[EPA–R07–OAR–2015–0708].
* *	*	*	* *	*

[FR Doc. 2016–04080 Filed 2–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0402; FRL–9943–07–Region 1]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Infrastructure State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) submissions from Rhode Island regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 1997 fine particle matter ($PM_{2.5}$), 2006 $PM_{2.5}$, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). Additionally, EPA is proposing to disapprove the submissions with respect to CAA section 110(a)(2)(H); a federal implementation plan has been in place for this requirement since 1973. EPA is also proposing to correct an earlier approval of this element for the 1997 8-hour ozone NAAQS. Finally, EPA is proposing to approve several statutes submitted by Rhode Island in support of their demonstration that the infrastructure requirements of the CAA have been met. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before March 30, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2015–0402 at *http://www.regulations.gov,* or via email to *Arnold.Anne@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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Publicly available docket materials are available either electronically in *www.regulations.gov* or at the U.S. Environmental Protection Agency, Region 1, Air Programs Branch, 5 Post Office Square, Boston, Massachusetts. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1664; *Burkhart.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What is the background of these SIP submissions?
  A. What Rhode Island SIP submissions does this rulemaking address?
  B. Why did the state make these SIP submissions?
  C. What is the scope of this rulemaking?

III. What guidance is EPA using to evaluate these SIP submissions?
IV. What is the result of EPA's review of these SIP submissions?
A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures
B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System
C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources
D. Section 110(a)(2)(D)—Interstate Transport
E. Section 110(a)(2)(E)—Adequate Resources
F. Section 110(a)(2)(F)—Stationary Source Monitoring System
G. Section 110(a)(2)(G)—Emergency Powers
H. Section 110(a)(2)(H)—Future SIP Revisions
I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D
J. Section 110(a)(2)(J)—Consultation with Government Officials; Public Notifications; Prevention Of Significant Deterioration; Visibility Protection
K. Section 110(a)(2)(K)—Air Quality Modeling/Data
L. Section 110(a)(2)(L)—Permitting Fees
M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities
N. Rhode Island Statutes Submitted for Incorporation Into the SIP
V. What action is EPA taking?
VI. Incorporation by Reference
VII. Stationary and Executive Order Reviews

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

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these SIP submissions?

A. What Rhode Island SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the Rhode Island Department of Environmental Management (RI DEM or DEM). The state submitted its infrastructure SIP for each NAAQS on the following dates: 1997 $PM_{2.5}$[1]—September 10, 2008; 2006 $PM_{2.5}$—November 6, 2009; 2008 Pb—October 26, 2011; 2008 ozone—January 2, 2013; 2010 NO_2—January 2, 2013; and 2010 SO_2—June 27, 2014.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement 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 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 $p.m._{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 Memo), followed by the October 14, 2011, ''Guidance on infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (2011 Memo). Most recently, EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2) and address the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. To the extent that the prevention of significant deterioration (PSD) program is comprehensive and non-NAAQS specific, a narrow evaluation of other NAAQS, such as the 1997 ozone NAAQS, will be included in the appropriate sections.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from Rhode Island that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA sections 110(a)(1) and 110(a)(2). Pursuant to these sections, each state must submit a SIP that provides for the implementation, maintenance, and enforcement of each primary or secondary NAAQS. States must make such SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a new or revised NAAQS.'' This requirement is triggered by the promulgation of a new or revised NAAQS and is not conditioned upon EPA's taking any other action. Section 110(a)(2) includes the specific elements that ''each such plan'' must address.

EPA commonly refers to such SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (''SSM'' emissions) that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''); and, (iii) existing provisions for PSD programs that may be inconsistent with current

[1] $PM_{2.5}$ refers to particulate matter of 2.5 microns or less in diameter, oftentimes referred to as ''fine'' particles.

requirements of EPA's ''Final New Source Review (NSR) Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these substantive areas separately. A detailed history, interpretation, and rationale for EPA's approach to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' See 79 FR 27241 at 27242–45.

III. What guidance is EPA using to evaluate these SIP submissions?

EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate. Historically, EPA has elected to use non-binding guidance documents to make recommendations for states' development and EPA review of infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements. EPA guidance applicable to these infrastructure SIP submissions is embodied in several documents. Specifically, attachment A of the 2007 Memo (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. The 2009 Memo provides additional guidance for certain elements regarding the 2006 $PM_{2.5}$ NAAQS, and the 2011 Memo provides guidance specific to the 2008 Pb NAAQS. Lastly, the 2013 Memo identifies and further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

IV. What is the result of EPA's review of these SIP submissions?

EPA is soliciting comment on our evaluation of Rhode Island's infrastructure SIP submissions in this notice of proposed rulemaking. In each of Rhode Island's submissions, a detailed list of Rhode Island 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 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, as applicable. The following review evaluates the state's submissions in light of section 110(a)(2) requirements and relevant EPA guidance.

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.[2] 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.

Rhode Island's infrastructure submittals for this element cite Rhode Island General Law (RIGL) and several RI Air Pollution Control Regulations (APCR) as follows:

Rhode Island General Law § 23–23–5(12), ''Powers and duties of the director,'' authorizes the RI DEM Director ''[t]o make, issue, and amend rules and regulations . . . for the prevention, control, abatement, and limitation of air pollution. . . .'' In addition, this section authorizes the Director to ''prohibit emissions, discharges and/or releases and . . . require specific control technology.'' The state has submitted RIGL § 23–23–5 for inclusion in its SIP.

The Rhode Island submittals cite more than a dozen specific rules that the state has adopted to control the emissions of Pb, SO_2, $PM_{2.5}$, volatile organic compounds (VOCs), and NO_X. A few, with their EPA approval citation are listed here: No. 9—Air Pollution Control Permits (except for Section 9.13, 9.14 9.15 and Appendix A which were not submitted) (64 FR 67495; December 2, 1999); No. 11—Petroleum Liquids Marketing and Storage (80 FR 32469; June 9, 2015); No. 12—Incinerators (47 FR 17816; April 26, 1982); No. 27—Control of Nitrogen Oxide Emissions (62 FR 46202; September 2, 1997); No. 37—Rhode Island's Low Emissions Vehicle Program (80 FR 50203; August 19, 2015); and No. 45—Rhode Island Diesel Engine Anti-Idling Program (73 FR 16203; March 27, 2008).

The RI regulations listed above were previously approved into the RI SIP by EPA. See 40 CFR 52.2070. In addition, EPA proposes to approve RIGL § 23–23–5 for inclusion in the SIP. Based upon EPA's review of the submittals, EPA further proposes to find that RI DEM's submittal meets the requirements of CAA Section 110(a)(2)(A). Therefore, EPA proposes that Rhode Island meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

In addition EPA is proposing to remove 40 CFR 52.2079, which was promulgated on January 24, 1995 (60 FR 4738). This section states that Rhode Island must comply with the requirements of 40 CFR 51.120, which are to implement the Ozone Transport Commission (OTC) Low Emission Vehicle (LEV) Program (a program which requires that only cleaner ''LEV'' cars can be sold in Rhode Island), or equivalent measures. Subsequently, Rhode Island adopted a Low Emission Vehicle Program based on California's LEV program (APCR No. 37), which has been approved into the SIP (65 FR 12476, March 9, 2000). In addition, Rhode Island recently adopted California's LEV II program (in revisions to APCR No. 37) which is even more stringent than LEV I, and that has also been approved into the SIP (80 FR 50203; August 19, 2015). Thus, Rhode Island has satisfied 40 CFR 52.2079, and therefore, EPA proposes to remove 40 CFR 52.2079 from the CFR.

As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making 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.

RI DEM operates an air quality monitoring network, and EPA approved the state's 2015 Annual Air Monitoring

[2] See, *e.g.,* EPA's final rule on ''National Ambient Air Quality Standards for Lead.'' 73 FR 66964, 67034 (Nov. 12, 2008).

Network Plan for $PM_{2.5}$, Pb, ozone, NO_2, and SO_2 on September 8, 2015. Furthermore, RI DEM populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that RI DEM has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) Enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications. A discussion of greenhouse gas (GHG) emissions permitting and the ''Tailoring Rule'' [3] is included within our evaluation of the PSD provisions of Rhode Island's submittals.

Sub-Element 1: Enforcement of SIP Measures

The Rhode Island General Laws provide the Director of RI DEM with the legal authority to enforce air pollution control requirements. Such enforcement authority is provided by RIGL § 23–23–5, which grants the Director of RI DEM general enforcement power, inspection and investigative authority, and the power to issue administrative orders, among other things. In addition, RI APCR No. 9, ''Air Pollution Control Permits,'' sets forth requirements for new and modified major and minor stationary sources. Section 9.3 of the regulation contains specific requirements for new and modified minor sources. Section 9.4 of the regulation contains specific new source review requirements applicable to major stationary source or major modifications located in nonattainment areas. Section 9.5 contains specific new source review requirements applicable to major stationary sources or major modifications located in attainment or unclassifiable areas (PSD).

EPA proposes that Rhode Island has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

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

Prevention of significant deterioration (PSD) applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS. RI DEM's EPA–approved PSD rules, contained at APCR No. 9, contain provisions that address the majority of the applicable infrastructure SIP requirements related to the 1997 $PM_{2.5}$, 2006 $p.m._{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 29, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone (see 70 FR 71612 at 71679, 71699–700 (November 29, 2005)). This requirement was codified in 40 CFR 51.166, and requires that states submit SIP revisions incorporating the requirements of the rule, including provisions that would treat NOx as a precursor to ozone provisions. These SIP revisions were to have been submitted to EPA by states by June 15, 2007. See 70 FR 71612 at 71683.

Rhode Island has incorporated several of the changes required by the Phase 2 Rule, but has not made the necessary changes to the definition of ''major stationary source'' identifying NO_X as a precursor to ozone. Therefore, we are proposing that Rhode Island has met all but one of the requirements of section 110(a)(2)(C) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS obligated by the Phase 2 Rule. By letter dated February 18, 2016, Rhode Island committed to submit the required provisions for EPA approval by a date no later than one year from conditional approval of Rhode Island's infrastructure submissions. Consequently, we are proposing to conditionally approve with respect to this requirement of the Phase 2 Rule.

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of $PM_{2.5}$, otherwise known as precursors. In the 2008 rule, EPA identified precursors to $PM_{2.5}$ for the PSD program to be SO_2 and NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient $PM_{2.5}$ concentrations.

The explicit references to SO_2, NO_X, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i)(*b*) and 40 CFR 52.21(b)(50)(i)(*b*). As part of identifying pollutants that are precursors to $PM_{2.5}$, the 2008 NSR Rule also required states to revise the definition of ''significant'' as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define ''significant'' for $PM_{2.5}$ to mean the following emissions rates: 10 tons per year (tpy) of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA

[3] In EPA's April 28, 2011 proposed rulemaking for infrastructure SIPs for the 1997 ozone and $PM_{2.5}$ NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (See 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS (See 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address Pb, NO_X as a precursor to ozone, $PM_{2.5}$ precursors, $PM_{2.5}$ and PM_{10} condensables, $PM_{2.5}$ increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2008 Pb NAAQS.

demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (See 73 FR 28321 at 28341).[4]

On January 18, 2011, Rhode Island submitted revisions to its PSD program incorporating the necessary changes obligated by the 2008 NSR Rule, with respect to provisions that explicitly identify precursors to $PM_{2.5}$. EPA approved Rhode Island's 2011 SIP revision on April 21, 2015 (80 FR 22106).

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in NSR permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits beginning on or after January 1, 2011. See 73 FR 28321 at 28334. This requirement is codified in 40 CFR 51.166(b)(49)(i)(*a*) and 40 CFR 52.21(b)(50)(i)(*a*). Revisions to states' PSD programs incorporating the inclusion of condensables were required be submitted to EPA by May 16, 2011 (See 73 FR 28321 at 28341).

Rhode Island's SIP-approved PSD program does not contain the exact language in 40 CFR 51.166(b)(49)(i)(*a*). However, EPA has previously determined that Rhode Island's SIP-approved regulations define $PM_{2.5}$ and PM_{10} such that the state's PSD program adequately accounts for the condensable fraction of $PM_{2.5}$ and PM_{10}. See 78 FR 63383 at 63386 (October 24, 2013).

Therefore, we are proposing that Rhode Island has met this set of requirements of section 110(a)(2)(C) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS regarding the requirements obligated by the 2008 NSR Rule.

On October 20, 2010 (75 FR 64864), EPA issued the final rule on the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (2010 NSR Rule). This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of ''increments,'' which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c).

The 2010 NSR Rule also established a new ''major source baseline date'' for $PM_{2.5}$ as October 20, 2010, and a new trigger date for $PM_{2.5}$ of October 20, 2011 in the definition of ''minor source baseline date.'' These revisions are codified in 40 CFR 51.166(b)(14)(i)(*c*) and (b)(14)(ii)(*c*), and 40 CFR 52.21(b)(14)(i)(*c*) and (b)(14)(ii)(*c*). Lastly, the 2010 NSR Rule revised the definition of ''baseline area'' to include a level of significance (SIL) of 0.3 micrograms per cubic meter, annual average, for $PM_{2.5}$. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i). Rhode Island has not yet made a SIP submittal to EPA that addresses EPA's 2010 NSR rule. However, by letter dated February 18, 2016, Rhode Island committed to submitting the necessary updates to its NSR regulation within one year of EPA's conditional approval. Therefore, we are proposing to conditionally approve this part of sub-element 2 of section 110(a)(2)(C) relating to requirements for state NSR regulations outlined within our 2010 NSR regulation.

With respect to Elements (C) and (J), EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Rhode Island has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs, with the exception of the deficiencies described elsewhere in this notice.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by EPA, the application of the Best Available Control Technology (BACT) requirement to GHG emissions from Step 1 or ''anyway'' sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.''

On August 19, 2015, EPA amended its PSD and title V regulations to remove from the Code of Federal Regulations portions of those regulations that the D.C. Circuit specifically identified as vacated. EPA intends to further revise the PSD and title V regulations to fully

[4] EPA notes that on January 4, 2013, the U.S. Court of Appeals for the DC Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM_{10} nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council* v. *EPA,* No. 08–1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's approval of Rhode Island's infrastructure SIP as to Elements C, D(i)(II), or J with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

implement the Supreme Court and D.C. Circuit rulings in a separate rulemaking. This future rulemaking will include revisions to additional definitions in the PSD regulations.

Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the additional planned revisions to EPA's PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA's additional actions to revise its PSD program rules in response to the court decisions for purposes of infrastructure SIP submissions. Instead, EPA is only evaluating such submissions to assure that the state's program addresses GHGs consistent with both the court decision, and the revisions to PSD regulations that EPA has completed at this time.

At present, EPA has determined that Rhode Island's SIP is sufficient to satisfy Elements (C), (D)(i)(II), and (J) with respect to GHGs. This is because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits issued to ''anyway sources'' contain limitations on GHG emissions based on the application of BACT. The approved Rhode Island PSD permitting program still contains some provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit amended judgment. Nevertheless, the presence of these provisions in the previously-approved plan does not render the infrastructure SIP submission inadequate to satisfy Elements (C), (D)(i)(II), and (J). The SIP contains the PSD requirements for applying the BACT requirement to GHG emissions from ''anyway sources'' that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent EPA's approval of Rhode Island's infrastructure SIP as to the requirements of Elements (C), (as well as sub-elements (D)(i)(II), and (J)(iii)).

For the purposes of the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS infrastructure SIPs, EPA reiterates that NSR Reform is not in the scope of these actions.

In summary, we are proposing to approve the majority of Rhode Island's submittals for this sub-element with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, but to conditionally approve these submittals regarding the identification of NO_X as a precursor to ozone in the definition of major stationary source and regarding the revisions required by the 2010 NSR Rule.

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

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutants. EPA last approved Rhode Island's minor NSR program, on May 7, 1981 (46 FR 25446) as well as updates to that program. Since this date, Rhode Island and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

We are proposing to find that Rhode Island 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 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 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 that states must comply with. It covers the following 5 topics, categorized as sub-elements: Sub-element 1, Contribute 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 4 prongs discussed below, 2 of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

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

With respect to the 2008 Pb NAAQS, the 2011 Memo notes that the physical properties of Pb prevent it from experiencing the same travel or formation phenomena as $PM_{2.5}$ or ozone. Specifically, there is a sharp decrease in Pb concentrations as the distance from a Pb source increases. Accordingly, although it may be possible for a source in a state to emit Pb at a location and in such quantities that contribute significantly to nonattainment in, or interference with maintenance by, any other state, EPA anticipates that this would be a rare situation, *e.g.,* sources emitting large quantities of Pb in close proximity to state boundaries. The 2011 Memo suggests that the applicable interstate transport requirements of section 110(a)(2)(D)(i)(I) with respect to Pb can be met through a state's assessment as to whether or not emissions from Pb sources located in close proximity to its borders have emissions that impact a neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state.

Rhode Island's infrastructure SIP submission for the 2008 Pb NAAQS notes that there are no large sources of Pb emissions located in close proximity to any of the state's borders with neighboring states. Additionally, Rhode Island's submittal and the emissions data the state collects from its sources indicate that there is no single source of Pb, or group of sources, anywhere within the state that emits enough Pb to cause ambient concentrations to approach the Pb NAAQS. Our review of the Pb emissions data from Rhode Island sources, which Rhode Island has entered into the EPA National Emissions Inventory (NEI) database, confirms this, and therefore, EPA agrees with Rhode Island and proposes that Rhode Island has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

Rhode Island's submittals did not address section 110(a)(2)(D)(i)(I) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 ozone, 2010 NO_2, or 2010 SO_2 NAAQS. Rhode Island did, however, make subsequent submittals for this sub-element on June 23, 2015 (ozone) and October 15, 2015 (NO_2 and SO_2), which EPA will act on in a subsequent notice. Therefore, EPA

is not taking any action with respect to this requirement for purposes of the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 ozone, 2010 NO_2, or 2010 SO_2 NAAQS at this time.

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

One aspect of section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state. As has already been discussed in the paragraphs addressing the PSD sub-element of Element C, Rhode Island has satisfied many, though not all, of the applicable PSD implementation rule requirements.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state. EPA approved Rhode Island's latest NNSR regulations on April 21, 2015 (80 FR 22106). These regulations contain provisions for how the state must treat and control sources in nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR 51.

As noted above and in Element C, Rhode Island's PSD program does not fully satisfy the requirements of EPA's PSD implementation rules, although Rhode Island has committed to submit the required provisions for EPA approval by a date no later than one year from conditional approval of Rhode Island's infrastructure submissions. Consequently, we are proposing to conditionally approve this sub-element for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS related to section 110(a)(2)(D)(i)(II) for the reasons discussed under Element C.

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

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo, the 2011 Memo, and 2013 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. A fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility.

Rhode Island's Regional Haze SIP was approved by EPA on May 22, 2012 (77 FR 30214). Accordingly, EPA proposes that Rhode Island has met the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

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

One aspect of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable 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. A lack of such a requirement in state rules would be grounds for disapproval of this element. EPA approved Rhode Island's PSD program, as well as updates to that program, with the most recent approval occurring on April 21, 2015 (80 FR 22106), which includes a provision requiring notice to neighboring states of RI DEM's intention to either issue a draft PSD permit or deny a permit application. See APCR No. 9, section 9.12.3(e). Therefore, we propose to approve Rhode Island's compliance with the infrastructure SIP requirements of section 126(a) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Rhode Island has no obligations under any other provision of section 126.

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

One portion of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. Rhode Island does not have any pending obligations under section 115 for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, or 2010 SO_2 NAAQS. Therefore, EPA is proposing that Rhode Island has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP and related issues. Additionally, Section 110(a)(2)(E)(ii) requires each state to comply with the requirements with respect to state boards under section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring adequate implementation of SIP obligations with respect to relevant NAAQS. This sub-element, however, is inapplicable to this action, because Rhode Island 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

Rhode Island, through its infrastructure SIP submittals, has documented that its air agency has the requisite authority and resources to carry out its SIP obligations. Rhode Island cites to RIGL § 23–23–5, which provides the Director of DEM with the legal authority to enforce air pollution control requirements. Additionally, this statute provides the Director with the authority to assess preconstruction permit fees and annual operating permit fees from air emissions sources and establishes a general revenue reserve account within the general fund to finance the state clean air programs. RI DEM further cites to RI APCR No. 28, ''Operating Permit Fees,'' which requires that major sources pay annual operating permit fees. Finally, Section III of the 1972 RI SIP specifies RI DEM's legal authority to implement SIP measures, and Section VII of the 1972 SIP describes the resources and manpower estimates for RI DEM. EPA proposes that Rhode Island has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

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

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) 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 (ii) 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.

In Rhode Island, no board or body approves permits or enforcement orders; these are approved by the Director of RI DEM. Thus, with respect to this sub-element, Rhode Island is subject only to the requirements of paragraph (a)(2) of section 128 of the CAA (regarding conflicts of interest). Accordingly, Rhode Island indicated in its January 2, 2013 infrastructure SIP submittals for the 2008 ozone and 2010 NO_2 NAAQS that it was submitting the Rhode Island Code of Ethics, RIGL chapter 36–14, for incorporation into the SIP.[5] The Rhode Island Code of Ethics, applies to state employees and public officials (see RIGL § 36–14–4), requires disclosure of potential conflicts of interest (see RIGL § 36–14–6), and provides that ‘‘No person subject to this Code of Ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction, or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities’’ (see RIGL § 36–14–5(a)). EPA is proposing to approve RIGL §§ 36–14–1 through –7 into the Rhode Island SIP.

EPA proposes that, with the inclusion of RIGL §§ 36–14–1 through –7 into the Rhode Island SIP as proposed, Rhode Island has met the applicable infrastructure SIP requirements for this sub-element for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

[5] Rhode Island also referenced incorporation of the Rhode Island Code of Ethics into the SIP in its June 27, 2014 infrastructure SIP submittal for the 2010 SO_2 NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Rhode Island's infrastructure submittals reference existing state regulations previously approved by EPA that require sources to monitor emissions and submit reports. For example, Rhode Island's submittals reference APCR No. 9, ‘‘Air Pollution Control Permits,’’ which requires emissions testing of permitted processes within 180 days of full operation and specifies that preconstruction permits issued contain an emissions testing section. Another example Rhode Island cites is APCR No. 14, ‘‘Record Keeping and Reporting,’’ which requires emission sources to annually report emissions and other data to RI DEM, and provides that information in certain reports obtained pursuant to APCR No. 14 ‘‘will be correlated with applicable emission and other limitations and will be available for public inspection.’’ Another example referenced in Rhode Island's submittals is APCR No. 27, ‘‘Control of Nitrogen Oxide Emissions,’’ listed in Element A, which requires annual emissions testing of subject sources and includes specifications for continuous emissions monitors.

EPA proposes to find that deficiencies with Rhode Island's recordkeeping authority outlined at 40 CFR 52.2074(a) have been remedied. In particular, in May 1972, EPA found that Rhode Island had not met the requirements of 40 CFR 51.230(e) (formerly 40 CFR 51.11(a)(5)), which provides that ‘‘Each plan must show that the State has legal authority to carry out the plan, including authority to . . . [o]btain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources.’’ In particular, EPA found that Rhode Island's ‘‘[a] uthority to require recordkeeping is deficient to the extent that [RIGL] section 23–25–13 requires only those sources with an air pollution control program to keep records.’’ 40 CFR 52.2074(a). Since this time, Rhode Island has revised (and renumbered) its statutes such that the applicable provision now applies not only to ‘‘any person owning or operating any air pollution control system,’’ but also to ‘‘any person owning or operating a source of air pollution which has the potential to emit any air contaminant, or any person owning or operating a source of air pollution which the director has reason to believe is emitting any extremely toxic air contaminant, that meets the definition in § 23–23–3 but may not have been adopted by the director.’’ RIGL § 23–23–13. In addition, RIGL § 23–23–5(16) provides RI DEM with the authority to ‘‘require any person who owns or operates any machine, equipment, device, article, or facility which has the potential to emit any air contaminant . . . to submit periodic reports on the nature and amounts of air contaminant emission from the machine, equipment, device, article, or facility.’’ In today's notice, EPA proposes to approve RIGL § 23–23–5. Furthermore, APCR No. 14, the latest revision of which was approved into the SIP on December 2, 1999, *see* 64 FR 67495, similarly requires certain recordkeeping by the ‘‘owner or operator of any facility that emits air contaminants.’’ Section 14.2. Finally, and as noted above, APCR No. 14 requires emission sources to report emissions and other data to RI DEM at least annually. Taken together, these post-1972 provisions significantly enhance Rhode Island's recordkeeping authority and remedy the deficiency identified in 40 CFR 52.2074(a) and, consequently, we are proposing to remove this provision from the Code of Federal Regulations.

EPA also proposes to approve Rhode Island's SIP submittal with respect to the deficiencies outlined at 40 CFR 52.2073 and 52.2074(b) regarding the public availability of emission data. In May 1972, EPA found that Rhode Island had not met the requirements of 40 CFR 51.116(c) (formerly 40 CFR 51.10(e)), which provides that a state's SIP ‘‘must provide for public availability of emission data reported by source owners or operators or otherwise obtained by a State or local agency.’’ EPA concluded that Rhode Island's SIP was deficient ‘‘since the plan does not provide for public availability of emission data.’’ 40 CFR 52.2073(a). At the same time, EPA found that Rhode

Island had not met the requirements of 40 CFR 51.230(f) (formerly 40 CFR 51.11(a)(6)), which provides, among other things, that ''Each plan must show that the State has legal authority to carry out the plan, including authority to . . . [r]equire owners or operators of stationary sources to make periodic reports to the State on the nature and amounts of emissions from such stationary sources'' and authority ''to make such data available to the public as reported and as correlated with any applicable emission standards or limitations.'' With respect to that requirement, EPA found that (1) Rhode Island's ''[a]uthority to release emission data to the public is deficient in that section 23–25–6 requires that only records concerning investigations be available to the public'' and that (2) ''section 23–25–5(g) and section 23–25–13 may limit the State's authority to release emission data.'' 40 CFR 52.2074(b). As a result, EPA promulgated regulations at 40 CFR 52.2073(b) regarding public availability of emission data.

While the present-day version of RIGL § 23–25–6 (now codified at RIGL § 23–23–6) still appears to apply only to records concerning investigations, the SIP-approved state regulation APCR No. 14 is not by its terms so limited. This regulation establishes certain recordkeeping requirements and provides that ''[i]nformation obtained from owners or operators of facilities pursuant to Section 14.2.1 . . . will be available for public inspection.'' Section 14.2.1 is not limited to records concerning investigations and specifically encompasses, among other things, ''data on . . . emissions of air contaminants . . . or other data that may be necessary to determine if the facility is in compliance with air pollution control regulations.'' [6] The current version of RIGL § 23–25–13 (now codified at § 23–23–13) requires sources to ''keep accurate records of operation'' and provides that such records ''may be submitted to the department as trade secret or proprietary information to the extent that protection is available under the [Rhode Island] public records act.'' By letter dated February 18, 2016, RI DEM informed EPA that, in practice, it makes emission data available to the public pursuant to APCR No. 14 and that it interprets RIGL § 23–23–13 and the state public records act at RIGL title 38 as not providing ''trade secret or proprietary information'' protection to emission data reported to the state. Furthermore, former RIGL § 23–25–5(g) has been amended since the disapproval, no longer containing the apparent limitation on the State's authority to release emission data.[7] Consequently, EPA proposes to approve Rhode Island's SIP as providing for public availability of emission data and that Rhode Island's authority to release emission data to the public is no longer deficient as described in 40 CFR 52.2073(a) and 52.2074(b). Thus, EPA proposes to approve Rhode Island's SIP as providing for correlation by RI DEM of emissions reports by sources with applicable emission limitations or standards, and as providing for the public availability of those emission reports. Therefore, we are proposing to remove from the Code of Federal Regulations 40 CFR 52.2073 in its entirety and the provisions in 40 CFR 52.2074(b) regarding public availability of emissions data.

EPA also proposes to find that additional deficiencies outlined at 40 CFR 52.2074(b) and 52.2075(a) regarding source surveillance have also been remedied. Section 52.2074(b) provides in relevant part that Rhode Island's SIP lacks adequate ''[a]uthority to require sources to install and maintain monitoring equipment'' and ''[a]uthority to require sources to periodically report. . . .'' Section 52.2075(a) provides that ''[t]he requirements of § 51.211 of this chapter are not met since the plan lacks adequate legal authority to require owners or operators of stationary sources to maintain records of, and periodically report information as may be necessary to enable the state to determine whether such sources are in compliance with applicable portions of the control strategy.'' As a result, section 52.2075(b) sets forth EPA regulations regarding source surveillance. As has already been discussed above, RIGL § 23–23–5(16) now provides the RI DEM Director with the authority to ''require any person who owns or operates [a source that has] the potential to emit any air contaminant, or which is emitting any extremely toxic air contaminant, to install, maintain, and use air pollution emission monitoring devices and to submit periodic reports on that nature and amounts of air contaminant emission from the machine, equipment, device, article, or facility.'' As has also been discussed previously, APCR No. 14 implements this authority by requiring facility owners or operators to keep certain records (including ''data that may be necessary to determine if the facility is in compliance with air pollution control regulations'') and report those records to RI DEM at least annually. Moreover, APCR No. 9, ''Air Pollution Control Permits,'' requires emissions testing of permitted processes within 180 days of full operation and specifies that any preconstruction permits issued contain an emissions testing section. In addition, APCR No. 27, ''Control of Nitrogen Oxide Emissions,'' requires annual emissions testing of subject sources and includes specifications for continuous emissions monitors. Consequently, EPA proposes to approve the Rhode Island SIP as providing adequate authority regarding source surveillance, and therefore proposes to remove 40 CFR 52.2074(b) and 52.2075(a) and (b) from the Code of Federal Regulations. For the foregoing reasons, EPA proposes that Rhode Island has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

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

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

[6] While EPA may have had reservations in 1976 as to whether the Rhode Island Department of Health—which at that time implemented the state's air pollution control program—lacked the statutory authority to promulgate APCR No. 14, *see* 41 FR 2231, 2231 (Jan. 15, 1976), revisions to state law that have occurred since that time convince us that RI DEM has sufficient authority. In addition to changes to RIGL § 23–23–5(16) discussed in the main text above, Rhode Island added a provision to RIGL § 23–23–2 that authorizes the RI DEM Director ''to exercise all powers, direct or incidental, necessary to carry out the purposes of this chapter to assure that the state of Rhode Island complies with the federal Clean Air Act.'' Additionally, RIGL § 23–23–5(24) provides that, ''[i]n addition to the powers and duties enumerated in this section, the director shall have all appropriate power to adopt rules, regulations, procedures, programs, and standards as mandated by the authorization of the federal Clean Air Act.''

[7] In 1972, RIGL § 23–25–5(g) contained the following sentence, which has since been removed from the state Clean Air Act: ''Any information relating to secret processes or methods of manufacture or production obtained in the course of such inspection shall be kept secret.'' *Compare* RIGL § 23–23–5(7).

We propose to find that Rhode Island's submittals and certain state statutes and regulations provide for authority comparable to that in section 303. Rhode Island's submittals cite Section V of the 1972 RI SIP, which specifies RI DEM's Emergency Episode Authority and Procedures and RIGL chapter 23–23.1 and § 23–23–16, which set forth certain emergency powers of the RI DEM Director. In particular, RIGL § 23–23–16 allows the Director to order a source to cease operations if it is determined that the source is violating any provision of RIGL Chapter 23–23, or any regulation or order issued thereunder, and that the violation poses ''an immediate danger to public health or safety.'' Section 23–23.1–5 of the RIGL provides that, if the RI DEM Director finds that air pollution anywhere in the state ''constitutes an unreasonable and emergency risk to the health of those present within that area,'' the Director shall communicate that finding to the governor, who ''may by proclamation declare . . . that an air pollution episode exists'' and may issue orders to, among other things, ''prohibit, restrict, or condition the operation of retail, commercial, manufacturing, industrial, or similar activity . . . [the] operation of incinerators . . . the burning or other consumption of any type of fuel [and/or] any and all other activity in the area which contributes or may contribute to the air pollution emergency.'' State law further provides that such gubernatorial orders ''shall not require any judicial or other order or confirmation of any type in order to become immediately effective as the legal obligation of all persons, firms, corporations, and other entities within the state.'' See RIGL § 23–23.1–7. In addition, such orders ''shall be enforced by [RI DEM], the state council of defense, state and local police, and air pollution enforcement personnel forces. Those enforcing any governor's order shall require no further authority or warrant in executing it than the issuance of the order itself.'' See RIGL § 23–23.1–8(a). Rhode Island has submitted RIGL §§ 23–23–16 and 23–23.1–5 for inclusion in the SIP.

In a letter dated February 18, 2016, Rhode Island also specified that RIGL § 42–17.1–2 and APCR No. 7, taken together with the authorities in the submittals, satisfy the requirement that the SIP provide for authority comparable to section 303. More specifically, APCR No. 7, which was previously approved into Rhode Island's SIP in 1981 (see 46 FR 25446), provides that ''[n]o person shall emit any contaminant which either alone or in connection with other emissions, by reason of their concentration and duration, may be injurious to human, plant or animal life, or cause damage to property or which unreasonably interferes with the enjoyment of life and property.'' [8] Rhode Island notes that the emission standard set in APCR No. 7 is extremely broad, and intentionally so. Section 42–17.1–2(21) of the RIGL provides that, ''[w]henever the director determines that there exists a violation of any law, rule, or regulation within his or her jurisdiction which requires immediate action to protect the environment, he or she may . . . issue an immediate compliance order stating the existence of the violation and the action he or she deems necessary.'' Such orders may, at the Director's discretion, be effective immediately upon service. *Id.* With regard to the authority to bring suit, section 42–17.1–2(21) further empowers the Director to ''institute injunction proceedings in the superior court of the state for enforcement of the compliance order and for appropriate temporary relief. . . .'' [9]

Finally, the Rhode Island Environmental Rights Act (''RIERA'') provides that ''each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state [and that] it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction.'' *Id.* § 10–20–1. Consequently, under RIERA, ''[a]ny city or town'' may bring suit against ''any person to enforce, or to restrain the violation of, any environmental quality standard which is designed to prevent or minimize pollution, impairment, or destruction of the environment,'' *id.* § 10–20–3(a), or bring an action ''for declaratory and equitable relief against any other person for the protection of the environment, or the interest of the public therein, from pollution, impairment, or destruction,'' *id.* § 10–20–3(b). An ''environmental quality standard'' is defined quite broadly as ''any statute, ordinance, limitation, regulation, rule, order, license, stipulation, agreement, or permit of the state or any instrumentality, agency, or political subdivision thereof.'' *Id.* § 10–20–2(2). RIERA also establishes an ''environmental advocate'' within the office of the Attorney General who is authorized to ''[m]aintain and/or intervene in civil actions authorized by'' RIERA and to ''take all possible actions, including but not limited to . . . formal legal action, to secure and insure compliance with the provisions of [RIERA] and any promulgated environmental quality standards.'' *Id.* § 10–20–3(d).

While no single Rhode Island statute or regulation mirrors the authorities of CAA section 303, we propose to find that the combination of state statutes and regulations discussed herein provide for comparable authority to immediately bring suit to restrain, and issue orders against, any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment.

Section 110(a)(2)(G) also requires that, for any NAAQS, Rhode Island have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. See 40 CFR 51.152(c). A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. *Id.* There is only one AQCR in Rhode Island—the Metropolitan Providence Interstate AQCR—and Rhode Island's portion thereof is classified as a Priority I area for PM, SO_X, carbon monoxide, and ozone and as a Priority III area for NO_2. See 40 CFR 52.2071. Consequently, as relevant to this proposed rulemaking action, Rhode Island's SIP must contain an emergency contingency plan meeting the specific requirements of 40 CFR 51.151 and 51.152 with respect to SO_2 and ozone.[10]

Rhode Island's submittals cite to APCR No. 10, ''Air Pollution Episodes,'' which specifies episode criteria for, and measures to be implemented during, air pollution alerts, warnings and emergencies to prevent ambient pollution concentrations from reaching significant harm levels and is very closely modeled on EPA's example regulations for contingency plans at 40 CFR part 51, Appendix L. As stated in

[8] Rhode Island's current version of APCR No. 7, though not incorporated into the SIP, has been expanded and contains a nearly identical provision, except that the ''and'' between ''concentration'' and ''duration'' has been replaced with an ''or.'' See APCR No. 7.2.

[9] This section further provides that the remedy provided therein ''shall be in addition to remedies relating to the removal or abatement of nuisances or any other remedies provided by law.'' With regard to the abatement of nuisances, Rhode Island law provides that, ''[w]henever a nuisance is alleged to exist, the attorney general or any citizen of the state may bring an action in the name of the state . . . to abate the nuisance and to perpetually enjoin the person or persons maintaining the nuisance and any or all persons owning any legal or equitable interest in the place from further maintaining or permitting the nuisance either directly or indirectly.'' RIGL § 10–1–1.

[10] Those regulations do not specifically address $PM_{2.5}$ and lead. See *also* 40 CFR 51.150.

Rhode Island's infrastructure SIP submittals under the discussion of public notification (Element J), Rhode Island also posts near real-time air quality data, air quality predictions and a record of historical data on the RI DEM Web site. DEM's predictions are also displayed daily in the *Providence Journal.* Alerts are sent by email to a large number of affected parties, including emissions sources, concerned individuals, schools, health and environmental agencies and the media. Alerts include information about the health implications of elevated pollutant levels and list actions that reduce emissions.

In addition, daily forecasted ozone and fine particle 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 Web site at *www.airnow.gov.* Notices are sent out to EnviroFlash participants when levels are forecast to exceed the current 8-hour ozone or 24-hour $PM_{2.5}$ standard.

Finally, we note that lead and $PM_{2.5}$ are not explicitly included in the contingency plan requirements of 40 CFR subpart H. In addition, Rhode Island notes in its submittals that, with respect to lead, there are no sources in the state that exceed EPA's reporting threshold of 0.5 tons per year and that the largest source has lead emissions of 0.076 tons per year. With respect to the 2006 $PM_{2.5}$ NAAQS, the EPA 2009 Guidance recommends that states develop emergency episode plans for any area that has monitored and recorded 24-hour $PM_{2.5}$ levels greater than 140 $\mu g/m^3$ since 2006. In its November 6, 2009 submittal, Rhode Island certified that the highest 24-hour $PM_{2.5}$ concentration recorded in the state since 2006 was 44.7 $\mu g/m^3$. Furthermore, EPA's review of Rhode Island's certified air quality data in AQS indicates that the highest 24-hour $PM_{2.5}$ concentration since that time (*i.e.,* data through 2014) is 56.2 $\mu g/m^3$, which occurred in 2010. Although not expected, if lead or $PM_{2.5}$ conditions were to change, Rhode Island does have general authority, as noted previously (*e.g.,* RIGL §§ 23–23–16, 23–23.1–5, 42–17.1–2(21) and APCR No. 7), to order a source to cease operations if it is determined that emissions from the source pose an immediate danger, or unreasonable and emergency risk, to public health or safety or to the environment.

These Rhode Island statutes, rules and regulations are consistent with the requirements of 40 CFR part 51, subpart H, section 51.150 through 51.153.

EPA proposes that Rhode Island has met the applicable infrastructure SIP requirements for section 110(a)(2)(G) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Finally, EPA proposes to remove an outdated section from the Code of Federal Regulations related to abatement orders. In 1973, certain provisions enacted at RIGL §§ 23–25–5(h) and 23–25–8(a) (now renumbered as RIGL §§ 23–23–5(8) and 23–23–8(a), respectively) concerning state-issued abatement orders were found to be inconsistent with the Clean Air Act and, accordingly, disapproved. See 40 CFR 52.2078(a). EPA then promulgated regulations placing limitations on the extent to which state orders could defer compliance with the SIP. See 40 CFR 52.2078(b). Because Rhode Island has since remedied the inconsistency by striking the inappropriate language [11] from RIGL § 23–23–5(8) and adding limiting language [12] to RIGL § 23–23–8(a), EPA proposes to remove 40 CFR 52.2078 as no longer necessary.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires that a state's SIP provide for revision in response to: Changes in the NAAQS; availability of improved methods for attaining the NAAQS; or an EPA finding that the SIP is substantially inadequate. In 1973, it was determined that Rhode Island's original SIP did not fully satisfy section 110(a)(2)(H) and EPA promulgated federal regulations to address the gap in the SIP. *See* 40 CFR 52.2080. Since Rhode Island's September 10, 2008, November 6, 2009, October 26, 2011, January 2, 2013, and June 27, 2014 submittals likewise do not address the gap in the SIP that led to a disapproval in 1973, EPA proposes to find that Rhode Island has not met applicable infrastructure SIP requirements for element H with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Accordingly, EPA proposes to disapprove this portion of the state's submittals. Further, EPA notes that our 2011 approval of the element H portion of Rhode Island's infrastructure submittal for the 1997 8-hour ozone NAAQS, *see* 76 FR 40248, was in error, because the state's submittal in that case likewise did not address the gap. EPA proposes to correct this oversight pursuant to section 110(k)(6) and to disapprove the 1997 8-hour ozone infrastructure submittal for element H. No further action by EPA or the state is required, however, because remedying federal regulations are already in place. Moreover, mandatory sanctions under CAA section 179 are inapplicable, because the submittal is not required under CAA title I part D nor in response to a SIP call under CAA section 110(k)(5).

[11] ". . . and the economic and social necessity of the source of air pollution." Former RIGL § 23–25–5(h).

[12] "No order or modification of the order may be entered by the director deferring compliance with a requirement of this chapter or the rules and regulations promulgated under this chapter, unless the deferral is consistent with provisions and procedures of the federal Clean Air Act." RIGL § 23–23–8(a).

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

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

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

The evaluation of the submissions from Rhode Island with respect to the requirements of CAA section 110(a)(2)(J) are described below.

Sub-Element 1: Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

Rhode Island General Law § 23–23–5, authorizes the RI DEM Director "[t]o advise, consult, and cooperate with the cities and towns and other agencies of the state, federal government, and other states and interstate agencies, and with effective groups in industries in furthering the purposes of this chapter." Rhode Island has submitted this statute for inclusion into the SIP. In addition, APCR No. 9, which has been approved into Rhode Island's SIP (see 78 FR 63383, October 24, 2013), directs RI DEM to notify relevant municipal officials and FLMs, among others, of tentative determinations by RI DEM with respect to permit applications for major stationary sources and major modifications.

EPA proposes to approve RIGL § 23–23–5 into the SIP and proposes that Rhode Island has met the infrastructure

SIP requirements of this portion of section 110(a)(2)(J) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-Element 2: Public Notification

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and must enhance public awareness of measures that can be taken to prevent exceedances. Rhode Island's APCR No. 10, ''Air Pollution Episodes,'' specifies criteria for, and measures to be implemented during, air pollution alerts, warnings and episodes. In addition, the RI DEM Web site includes near real-time air quality data, air quality predictions and a record of historical data. DEM's predictions are also displayed daily in the *Providence Journal,* a newspaper with statewide circulation. Alerts are sent by email to a large number of affected parties, including emissions sources, concerned individuals, schools, health and environmental agencies and the media. Alerts include information about the health implications of elevated pollutant levels and list actions that reduce emissions. In addition, Air Quality Data Summaries of the year's air quality monitoring results are issued annually. The summaries are sent to a mailing list of interested parties and posted on the RI DEM Web site. Rhode Island is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs. EPA proposes that Rhode Island has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-Element 3: PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Rhode Island's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and, as we have noted, does not fully satisfy the requirements of EPA's PSD implementation rules, although Rhode Island has committed to submit the required provisions for EPA approval by a date no later than one year from conditional approval of Rhode Island's infrastructure submissions. Consequently, we are proposing to conditionally approve the PSD sub-element of section 110(a)(2)(J) for the, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, consistent with the actions we are proposing for sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II).

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 Memo, 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 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Accordingly, Rhode Island did not make a submittal for this sub-element, for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, or 2010 SO_2 NAAQS infrastructure SIP submittals.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

To satisfy Element K, the state air agency must demonstrate that it has the authority to perform air quality modeling to predict effects on air quality of emissions of any NAAQS pollutant and submission of such data to EPA upon request. Rhode Island reviews the potential impact of major sources consistent with 40 CFR part 51, appendix W, ''Guidelines on Air Quality Models.'' Rhode Island APCR No. 9, ''Air Pollution Control Permits,'' requires permit applicants to submit air quality modeling to demonstrate impacts of new and modified major sources. The modeling data are sent to EPA along with the draft major permit.

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 Rhode Island has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 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 cost of reviewing, approving, implementing, and enforcing a permit. Section 23–23–5 of the RIGL provides for the assessment of operating permit fees and preconstruction permit fees for air emissions sources. In addition, RI DEM's ''Rules and Regulations Governing the Establishment of Various Fees'' sets forth permit fee requirements for air emissions sources and the legal authority to collect those fees. These rules and regulations are promulgated pursuant to RIGL Chapter 23–23 Air Pollution, and Chapter 42–35, Administrative Procedures. Rhode Island's infrastructure SIP submittals also refer to its regulations implementing its operating permit program pursuant to 40 CFR part 70. Rhode Island's Title V permitting program, APCR No. 28, ''Operating Permit Fees,'' requires major sources to pay annual operating permit fees. EPA's full approval of Rhode Island's title V program (APCR No. 28) became effective on November 30, 2001. See 66 FR 49839 (Oct. 1, 2001). To gain this approval, Rhode Island demonstrated the ability to collect sufficient fees to run the program. The fees collected from title V sources are above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). EPA proposes that Rhode Island has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities

Pursuant to Element M, states must consult with, and allow participation from, local political subdivisions affected by the SIP. Rhode Island's infrastructure submittals reference RIGL § 23–23–5, which provides for consultation with affected local political subdivisions and authorizes the RI DEM Director ''to advise, consult, and cooperate with the cities and towns and other agencies of the state . . . and other states and interstate agencies . . . in furthering he purposes of'' the state Clean Air Act (*i.e.,* RIGL chapter 23–23). EPA proposes that Rhode Island has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

N. Rhode Island Statutes for Inclusion Into the Rhode Island SIP

As noted above in the discussion of several elements, Rhode Island submitted, and EPA is proposing to approve, Sections 23–23–5, 23–23–16, 23–23.1–5, and 36–14–1 through -7 of the Rhode Island General Laws (RIGL) into the SIP.

V. What action is EPA taking?

EPA is proposing to approve the infrastructure SIPs submitted by Rhode Island for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, with the exception of certain aspects relating to the state's PSD program, which we are proposing to conditionally approve, and section 110(a)(2)(H), which we are proposing to disapprove. EPA is also proposing to correct an earlier approval pursuant to section 110(k)(6) with respect to section 110(a)(2)(H) for the 1997 8-hour ozone NAAQS. No further action by EPA or the state is required, however, since federal regulations are already in place that address the gap in the state's submittals with respect to element H.

The state submitted these SIPs on the following dates: 1997 $PM_{2.5}$—September 10, 2008; 2006 $PM_{2.5}$—November 6. 2009; 2008 Pb—October 13, 2011; 2008 ozone—January 2, 2013; 2010 NO_2—January 2, 2013; and 2010 SO_2—May 30, 2013. Specifically, EPA's proposed actions regarding each infrastructure SIP requirement, are contained in Table 1 below.

TABLE 1—PROPOSED ACTION ON RHODE ISLAND'S INFRASTRUCTURE SIP SUBMITTALS

Element	2008 Pb	2008 Ozone	2010 NO_2	2010 SO_2	1997 and 2006 $PM_{2.5}$
(A): Emission limits and other control measures	A	A	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A	A	A
(C)1: Enforcement of SIP measures	A	A	A	A	A
(C)2: PSD program for major sources and major modifications	A*	A*	A*	A*	A*
(C)3: PSD program for minor sources and minor modifications	A	A	A	A	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A	NI	NI	NI	NS
(D)2: PSD	A*	A*	A*	A*	A*
(D)3: Visibility Protection	A	A	A	A	A
(D)4: Interstate Pollution Abatement	A	A	A	A	A
(D)5: International Pollution Abatement	A	A	A	A	A
(E): Adequate resources	A	A	A	A	A
(E): State boards	A	A	A	A	A
(E): Necessary assurances with respect to local agencies	NA	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A	A
(G): Emergency power	A	A	A	A	A
(H): Future SIP revisions	D	D	D	D	D
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+	+
(J)1: Consultation with government officials	A	A	A	A	A
(J)2: Public notification	A	A	A	A	A
(J)3: PSD	A*	A*	A*	A*	A*
(J)4: Visibility protection	+	+	+	+	+
(K): Air quality modeling and data	A	A	A	A	A
(L): Permitting fees	A	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A	A

In the above table, the key is as follows:
A Approve.
A* Approve but conditionally approve aspect of PSD program relating to the identification of NO_X as a precursor of ozone and the revisions required by the 2010 NSR rule.
D Disapprove, but no further action required because federal regulations already in place.
\+ Not germane to infrastructure SIPs.
NI Not included in the January 2, 2013 (ozone and NO_2) and May 20, 2013 (SO_2) submittals which are the subject of today's action. Rhode Island later submitted SIPs to address this element on June 23, 2015 (ozone) and October 15, 2015 (NO_2 and SO_2). EPA will act at a later time on those submittals.
NS No Submittal.
NA Not applicable.

In addition, EPA is proposing to approve, and incorporate into the Rhode Island SIP, the following Rhode Island statutes which were included for approval in Rhode Island's infrastructure SIP submittals: Sections 23–23–5, 23–23–16, 23–23.1–5, and 36–14–1 through –7. Finally, for the reasons stated above EPA is proposing to remove 40 CFR 52.2073(a) and (b); 52.2074(a) and (b); 52.2075(a) and (b); 52.2078(a) and (b); and 52.2079 from the CFR.

As noted in Table 1, we are proposing to conditionally approve portions of Rhode Island's infrastructure SIP submittals pertaining to the state's PSD program for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to submit an update to its PSD program that fully remedies the deficiencies mentioned above under element C. If the State fails to do so, this action will become a disapproval one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Rhode Island SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new

submittal. If EPA disapproves the new submittal, the conditionally approved infrastructure SIP elements for all affected pollutants will be disapproved. In addition, a final disapproval triggers the Federal Implementation Plan requirement under section 110(c). If EPA approves the new submittal, the PSD program and relevant infrastructure SIP elements will be fully approved and replace the conditionally approved program in the SIP.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting 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**.

VI. 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 several Rhode Island statutes referenced in Section V above. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 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);
- 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: February 19, 2016.

Deborah A. Szaro,

Acting Regional Administrator, EPA New England.

[FR Doc. 2016–04405 Filed 2–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0006; FRL–9942–89–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Prevention of Significant Deterioration; Fine Particulate Matter ($PM_{2.5}$)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia which revises Virginia's Prevention of Significant Deterioration (PSD) air quality preconstruction permitting program to be consistent with the federal PSD regulations regarding the use of the significant monitoring concentration (SMC) and significant impact levels (SILs) for fine particulate matter ($PM_{2.5}$) emissions. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 30, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0006 at *http://www.regulations.gov,* or via email to *johansen.amy@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