Authority: 39 U.S.C. 503; 3633.

■ 2. Amend § 3015.7 by revising paragraph (c) to read as follows:

§ 3015.7 Standard for compliance.

* * * * *

(c)(1) Annually, on a fiscal year basis, the appropriate share of institutional costs to be recovered from competitive products collectively, at a minimum, will be calculated using the following formula:

$AS_{t+1} = AS_t * (1 + \%\Delta CCM_{t-1} + CGD_{t-1})$

Where,

AS = Appropriate Share, expressed as a percentage and rounded to one decimal place
CCM = Competitive Contribution Margin
CGD = Competitive Growth Differential
t = Fiscal Year
If t = 0 = FY 2007, AS = 5.5 percent

(2) The Commission shall, as part of each Annual Compliance Determination, calculate and report competitive products' appropriate share for the upcoming fiscal year using the formula set forth in paragraph (c)(1) of this section.

[FR Doc. 2018–17221 Filed 8–10–18; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0138; FRL–9981–85–Region 1]

Air Plan Approval; Maine; Infrastructure State Implementation Plan Requirements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from Maine that addresses the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). EPA is also proposing to conditionally approve one sub-element of Maine's infrastructure SIP. 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 with respect to this NAAQS under the CAA.

DATES: Comments must be received on or before September 12, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2018–0138 at *https://www.regulations.gov,* or via email to *conroy.dave@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 *www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, Air Programs Branch, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100 (Mail code OEP05–2), Boston, MA 02109—3912, tel. (617) 918–1684; *simcox.alison@epa.gov.*

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

Table of Contents

I. Background and Purpose

A. What Maine SIP submission does this rulemaking address?

This rulemaking addresses a July 6, 2016 submission from the Maine Department of Environmental Protection (Maine DEP) regarding the infrastructure SIP requirements of the CAA for the 2012 fine particle ($PM_{2.5}$[1]) National Ambient Air Quality Standard (NAAQS). The primary, health-based annual standard is set at 12.0 micrograms per cubic meter ($\mu g/m^3$) and the 24-hour standard is set at 35 $\mu g/m^3$. *See* 78 FR 3086. Under sections 110(a)(1) and (2) of the CAA, states are required to provide infrastructure SIP submissions to ensure that state SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2012 $PM_{2.5}$ NAAQS. On March 1, 2018, Maine DEP submitted a letter providing clarifying information for several of its infrastructure SIP submittals. In a July 17, 2018 email, Maine DEP asked EPA to apply this letter to the infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS, as well. The information in the letter and email (both included in the docket for this rulemaking) is mainly applicable to Elements E, F, G, and K.

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

B. What is the scope of this rulemaking?

EPA is acting on a SIP submission from Maine DEP that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 $PM_{2.5}$ 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 Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current 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.

II. What guidance is EPA using to evaluate this SIP submission?

EPA highlighted the statutory requirement to submit infrastructure SIPs within 3 years of promulgation of a new NAAQS in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 guidance). EPA has issued additional guidance documents and memoranda, including a September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (2013 memorandum).[2]

With respect to the ''Good Neighbor'' or interstate transport requirements for infrastructure SIPs, the most recent relevant EPA guidance is a memorandum published on March 17, 2016, entitled ''Information on the Interstate Transport ''Good Neighbor'' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' (2016 memorandum). The 2016 memorandum describes EPA's past approach to addressing interstate transport, and provides EPA's general review of relevant modeling data and air quality projections as they relate to the 2012 annual $PM_{2.5}$ NAAQS. The 2016 memorandum provides information relevant to EPA Regional office review of the CAA section 110(a)(2)(D)(i)(I) ''Good Neighbor'' provision requirements in infrastructure SIPs with respect to the 2012 annual $PM_{2.5}$ NAAQS. This rulemaking considers information provided in that memorandum.

III. EPA's review

EPA is soliciting comment on our evaluation of Maine's infrastructure SIP submission in this notice of proposed rulemaking. In Maine's submission, a detailed list of Maine 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 2012 $PM_{2.5}$ NAAQS. 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.[3] 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.

Maine's infrastructure submittal for this element cites Maine laws and regulations that include enforceable emission limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA. Maine DEP statutory authority with respect to air quality is set out in Title 38 of the Maine Revised Statutes Annotated (''MRSA''), Chapter 4, ''Protection and Improvement of Air.'' Maine DEP's general authority to promulgate regulations is codified at 38 MRSA Chapter 2, Subchapter 1, ''Organization and Powers,'' [4] and the authority to establish emission standards and regulations implementing ambient air quality standards is contained in 38 MRSA Chapter 4, sections 585 and 585–A.

The Maine submittal cites two dozen specific rules that the state has adopted to control the emissions of criteria pollutants and precursors, including $PM_{2.5}$. A few of these rules, with their EPA-approval citation, are listed here: 06–096 Code of Maine Regulations (''CMR'') Chapter 102, ''Open Burning'' (73 FR 9459, February 21, 2008); Chapter 103, ''Fuel Burning Equipment

[2] This memorandum and other referenced guidance documents and memoranda are included in the docket for this action.

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

[4] Maine DEP consists of the Board of Environmental Protection (''Board'') and a Commissioner. 38 MRSA § 341–A(2). In general, the Board is authorized to promulgate ''major substantive rules'' and the Commissioner has rulemaking authority with respect to rules that are ''not designated as major substantive rules.'' *Id.* § 341–H.

Particulate Emission Standard'' (50 FR 7770, February 26, 1985); Chapter 104, ''Incinerator Particulate Emission Standard'' (37 FR 10842, May 31, 1972); and Chapter 150, ''Control of Emissions from Outdoor Wood Boilers'' (April 24, 2012). The Maine regulations listed above were previously approved into the Maine SIP by EPA. *See* 40 CFR 52.1020.

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2012 $PM_{2.5}$ NAAQS. 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 provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze ambient air quality data, and make such 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.

Pursuant to authority granted to it by 38 MRSA §§ 341–A(1) and 584–A, Maine DEP operates an air quality monitoring network, and EPA approved the state's most recent Annual Air Monitoring Network Plan for $PM_{2.5}$ on August 23, 2017.[5] Furthermore, Maine DEP populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that Maine DEP meets the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 $PM_{2.5}$ NAAQS.

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

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.

Sub-Element 1: Enforcement of SIP Measures

Maine DEP identifies the sources of its authority to enforce the measures it cites to satisfy Element A (Emission limits and other control measures) as 38 MRSA Section 347–A, ''Violations,'' 38 MRSA Section 347–C, ''Right of inspection and entry,'' 38 MRSA Section 348, ''Judicial Enforcement,'' 38 MRSA Section 349, ''Penalties,'' and 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations,'' which include processes for both civil and criminal enforcement actions. Construction of new or modified stationary sources in Maine is regulated by 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations,'' which requires best available control technology (BACT) controls for PSD sources, including for $PM_{2.5}$. EPA proposes that Maine has met the enforcement requirement of section 110(a)(2)(C) with respect to the 2012 $PM_{2.5}$ 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. Maine DEP's EPA-approved PSD rules, contained at 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations,'' contain provisions that address applicable requirements for all regulated NSR pollutants, including Greenhouse Gases (GHGs).

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 71679. This requirement is codified in 40 CFR 51.166, and requires that states submit SIP revisions incorporating the requirements of the rule, including provisions that would treat NO_X 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 71683.

Maine has adopted, and EPA has approved, rules addressing the changes to 40 CFR 51.166 required by the Phase 2 Rule, including amending its SIP to include NO_X and VOC as precursor pollutants to ozone, in order to define what constitutes a ''significant'' increase in actual emissions from a source of air contaminants. *See* 81 FR 50353 (August 1, 2016). Therefore, EPA proposes to approve Maine's infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS with respect to the requirements of the Phase 2 Rule and the PSD sub-element of section 110(a)(2)(C).

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 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.[6]

On August 1, 2016 (81 FR 50353), EPA approved revisions to Maine's PSD program that identify SO_2 and NO_X as precursors to $PM_{2.5}$ and revise the state's regulatory definition of ''significant'' for $PM_{2.5}$ to mean 10 tons per year (tpy) or more of direct $PM_{2.5}$ emissions, 40 tpy or more of SO_2 emissions, or 40 tpy or more of NO_X emissions.

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*).

Maine's SIP-approved PSD program defines $PM_{2.5}$ and PM_{10} emissions in such a manner that gaseous emissions which would condense under ambient conditions are treated in an equivalent manner as required by EPA's definition of ''regulated air pollutant'' in 40 CFR 51.166(b)(49)(i)(*a*). EPA approved these definitions into the SIP on August 1, 2016 (81 FR 50353). Consequently, we propose that the state's PSD program adequately accounts for the condensable fraction of $PM_{2.5}$ and PM_{10}.

Therefore, we propose to approve Maine's infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS with respect to the requirements of the 2008 NSR Rule and the PSD sub-element of section 110(a)(2)(C).

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). On June 24, 2014 (79 FR 35695), EPA approved $PM_{2.5}$ increments in 06–096 CMR Chapter 110 of Maine's regulations.

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 ($\mu g/m^3$), 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). On August 1, 2016 (81 FR 50353), EPA approved revisions to the Maine SIP that address EPA's 2010 NSR rule. Therefore, with respect to the 2010 NSR Rule and the PSD sub-element of section 110(a)(2)(C), we are proposing to approve Maine's infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS.

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. Maine has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

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 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

[6] EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (DC 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 Maine'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 revisitation 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.

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 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.

On October 5, 2012 (77 FR 49404), EPA approved revisions to the Maine SIP that modified Maine's PSD program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Maine's PSD permitting requirements for their GHG emissions. Therefore, EPA has determined that Maine's SIP is sufficient to satisfy Elements C, D(i)(II), and J with respect to GHGs. The Supreme Court decision and subsequent D.C. Circuit judgment do not prevent EPA's approval of Maine's infrastructure SIP as to the requirements of Element C, as well as sub-elements D(i)(II), and J(iii).

For the purposes of this rulemaking on Maine's infrastructure SIP, EPA reiterates that NSR Reform is not in the scope of these actions.

In summary, we are proposing to approve Maine's submittal for this sub-element with respect to the 2012 $PM_{2.5}$ NAAQS.

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

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulate emissions of the relevant NAAQS pollutants. EPA last approved revisions to Maine's minor NSR program on August 1, 2016 (81 FR 50353). Maine and EPA rely on the existing minor NSR program in 06–096 CMR Chapter 115 to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2012 $PM_{2.5}$ NAAQS.

We are proposing to find that Maine has met the requirement to have a SIP-approved minor new source review permit program as required under Section 110(a)(2)(C) for the 2012 $PM_{2.5}$ NAAQS.

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

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution with which states must comply. It covers the following five topics, categorized as sub-elements: Sub-element 1, Significant contribution to nonattainment, and interference with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the four prongs discussed below, two of which are found within sub-element 1. Sub-elements 4 and 5 are found under section 110(a)(2)(D)(ii) of the Act and include provisions insuring compliance with sections 115 and 126 of the Act relating to interstate and international pollution abatement.

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

Section 110(a)(2)(D)(i)(I) of the CAA requires a SIP to prohibit any emissions activity in the state that will contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any downwind state. EPA commonly refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the ''Good Neighbor'' or ''transport'' provisions of the CAA. This rulemaking proposes action on the portions of Maine's July 6, 2016, SIP submission that address the prong 1 and 2 requirements with respect to the 2012 $PM_{2.5}$ NAAQS.

EPA has developed a consistent framework for addressing the prong 1 and 2 interstate-transport requirements with respect to the $PM_{2.5}$ NAAQS in several previous federal rulemakings. The four basic steps of that framework include: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) identifying which upwind states contribute to these identified problems in amounts sufficient to warrant further review and analysis; (3) for states identified as contributing to downwind air quality problems, identifying upwind emissions reductions necessary to prevent an upwind state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS downwind; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures. This framework was most recently applied with respect to $PM_{2.5}$ in the Cross-State Air Pollution Rule (CSAPR), which addressed both the 1997 and 2006 $PM_{2.5}$ standards, as well as the 1997 ozone standard. *See* 76 FR 48208 (August 8, 2011).

EPA's analysis for CSAPR, conducted consistent with the four-step framework, included air-quality modeling that evaluated the impacts of 38 eastern states on identified receptors in the eastern United States. EPA indicated that, for step 2 of the framework, states with impacts on downwind receptors that are below the contribution threshold of 1% of the relevant NAAQS would not be considered to significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS, and would, therefore, not be included in CSAPR. *See* 76 FR 48220. EPA further indicated that such states could rely on EPA's analysis for CSAPR as technical support in order to demonstrate that their existing or future interstate transport SIP submittals are adequate to address the transport

requirements of 110(a)(2)(D)(i)(I) with regard to the relevant NAAQS. *Id.*

In addition, as noted above, on March 17, 2016, EPA released the 2016 memorandum to provide information to states as they develop SIPs addressing the Good Neighbor provision as it pertains to the 2012 $PM_{2.5}$ NAAQS. Consistent with step 1 of the framework, the 2016 memorandum provides projected future-year annual $PM_{2.5}$ design values for monitors throughout the country based on quality-assured and certified ambient-monitoring data and recent air-quality modeling and explains the methodology used to develop these projected design values. The memorandum also describes how the projected values can be used to help determine which monitors should be further evaluated to potentially address if emissions from other states significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS at these monitoring sites. The 2016 memorandum explained that the pertinent year for evaluating air quality for purposes of addressing interstate transport for the 2012 $PM_{2.5}$ NAAQS is 2021, the attainment deadline for 2012 $PM_{2.5}$ NAAQS nonattainment areas classified as Moderate. Accordingly, because the available data included 2017 and 2025 projected average and maximum $PM_{2.5}$ design values calculated through the CAMx photochemical model, the memorandum suggests approaches states might use to interpolate $PM_{2.5}$ values at sites in 2021.

For all but one monitor site in the eastern United States, the modeling data provided in the 2016 memorandum showed that monitors were expected to both attain and maintain the 2012 $PM_{2.5}$ NAAQS in both 2017 and 2025. The modeling results project that this one monitor, the Liberty monitor, (ID number 420030064), located in Allegheny County, Pennsylvania, will be above the 2012 annual $PM_{2.5}$ NAAQS in 2017, but only under the model's maximum projected conditions, which are used in EPA's interstate transport framework to identify maintenance receptors. The Liberty monitor (along with all the other Allegheny County monitors) is projected to both attain and maintain the NAAQS in 2025. The 2016 memorandum suggests that under such a condition (again, where EPA's photochemical modeling indicates an area will maintain the 2012 annual $PM_{2.5}$ NAAQS in 2025, but not in 2017), further analysis of the site should be performed to determine if the site may be a nonattainment or maintenance receptor in 2021 (which, again, is the attainment deadline for moderate $PM_{2.5}$ areas). The memorandum also indicates that for certain states with incomplete ambient monitoring data, additional information including the latest available data, should be analyzed to determine whether there are potential downwind air quality problems that may be impacted by transported emissions. This rulemaking considers these analyses for Maine, as well as additional analysis conducted by EPA during review of Maine's submittal.

To develop the projected values presented in the memorandum, EPA used the results of nationwide photochemical air-quality modeling that it recently performed to support several rulemakings related to the ozone NAAQS. Base-year modeling was performed for 2011. Future-year modeling was performed for 2017 to support the proposed CSAPR Update for the 2008 Ozone NAAQS. *See* 80 FR 75705 (December 3, 2015). Future-year modeling was also performed for 2025 to support the Regulatory Impact Assessment of the final 2015 Ozone NAAQS.[7] The outputs from these model runs included hourly concentrations of $PM_{2.5}$ that were used in conjunction with measured data to project annual average $PM_{2.5}$ design values for 2017 and 2025. Areas that were designated as moderate $PM_{2.5}$ nonattainment areas for the 2012 annual $PM_{2.5}$ NAAQS in 2014 must attain the NAAQS by December 31, 2021, or as expeditiously as practicable. Although neither the available 2017 nor 2025 future-year modeling data corresponds directly to the future-year attainment deadline for moderate $PM_{2.5}$ nonattainment areas, EPA believes that the modeling information is still helpful for identifying potential nonattainment and maintenance receptors in the 2017–2021 period. Assessing downwind $PM_{2.5}$ air-quality problems based on estimates of air-quality concentrations in a future year aligned with the relevant attainment deadline is consistent with the instructions from the United States Court of Appeals for the District of Columbia Circuit in *North Carolina* v. *EPA,* 531 F.3d 896, 911–12 (DC Cir. 2008) that upwind emission reductions should be harmonized, to the extent possible, with the attainment deadlines for downwind areas.

Maine's Submission for Prongs 1 and 2

On July 6, 2016, Maine DEP submitted an infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS that addressed prongs 1 and 2 for the 2012 $PM_{2.5}$ NAAQS. The state's submission relied in part on EPA's analysis performed for the CSAPR rulemaking to conclude that the state will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any downwind area.

EPA analyzed the state's July 2016 submittal to determine whether it fully addresses the prong 1 and 2 transport provisions with respect to the 2012 $PM_{2.5}$ NAAQS. As discussed below, EPA concludes that emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors (NO_X and SO_2) in Maine will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS in any other state.

Analysis of Maine's Submission for the 2012 $PM_{2.5}$ NAAQS

As noted above, the modeling discussed in EPA's 2016 memorandum identified one potential maintenance receptor for the 2012 $PM_{2.5}$ NAAQS at the Liberty monitor (ID number 420030064), located in Allegheny County. The memorandum also identified certain states with incomplete ambient monitoring data as areas that may require further analysis to determine whether there are potential downwind air quality problems that may be impacted by transported emissions.

While developing the 2011 CSAPR rulemaking, EPA modeled the impacts of all 38 eastern states in its modeling domain on $PM_{2.5}$ concentrations at downwind receptors in other states in the 2012 analysis year in order to evaluate the contribution of upwind states on downwind states with respect to the 1997 and 2006 $PM_{2.5}$. Although the modeling was not conducted for purposes of analyzing upwind states' impacts on downwind receptors with respect to the 2012 $PM_{2.5}$ NAAQS, the contribution analysis for the 1997 and 2006 standards can be informative for evaluating Maine's compliance with the Good Neighbor provision for the 2012 standard.

This CSAPR modeling showed that Maine had a very small impact (0.003 $\mu g/m^3$) on the Liberty monitor in Allegheny County, which is the only out-of-state monitor that may be a nonattainment or maintenance receptor in 2021. Although EPA has not proposed a specific threshold for evaluating the 2012 $PM_{2.5}$ NAAQS, EPA notes that Maine's impact on the Liberty monitor is far below the threshold of 1% for the annual 2012 $PM_{2.5}$ NAAQS (*i.e.,* 0.12 $\mu g/m^3$) that EPA previously used to evaluate the contribution of upwind states to downwind air-quality monitors. (A spreadsheet showing

[7] *See* 2015 ozone NAAQS RIA at: *https://www3.epa.gov/ttnecas1/docs/20151001ria.pdf.*

CSAPR contributions for ozone and $PM_{2.5}$ is included in docket EPA–HQ–OAR–2009–0491–4228.) Therefore, even if the Liberty monitor were considered a receptor for purposes of transport, the EPA proposes to conclude that Maine will not significantly contribute to nonattainment, or interfere with maintenance, of the 2012 $PM_{2.5}$ NAAQS at that monitor.

In addition, the Liberty monitor is already close to attaining the 2012 $PM_{2.5}$ NAAQS, and expected emissions reductions in the next four years will lead to additional reductions in measured $PM_{2.5}$ concentrations. There are both local and regional components to measured $PM_{2.5}$ levels. All monitors in Allegheny County have a regional component, with the Liberty monitor most strongly influenced by local sources. This is confirmed by the fact that annual average measured concentrations at the Liberty monitor have consistently been 2–4 $\mu g/m^3$ higher than other monitors in Allegheny County.

Specifically, previous CSAPR modeling showed that regional emissions from upwind states, particularly SO_2 and NO_X emissions, contribute to $PM_{2.5}$ nonattainment at the Liberty monitor. In recent years, large SO_2 and NO_X reductions from power plants have occurred in Pennsylvania and states upwind from the Greater Pittsburgh region. Pennsylvania's energy sector emissions of SO_2 will have decreased 166,000 tons between 2015–2017 as a result of CSAPR implementation. This is due to both the installation of emissions controls and retirements of electric generating units (EGUs). Projected power plant closures and additional emissions controls in Pennsylvania and upwind states will help further reduce both direct $PM_{2.5}$ and $PM_{2.5}$ precursors. Regional emission reductions will continue to occur from current on-the-books federal and state regulations such as the federal on-road and non-road vehicle programs, and various rules for major stationary emissions sources. *See* proposed approval of the Ohio Infrastructure SIP for the 2012 $PM_{2.5}$ NAAQS (82 FR 57689; December 7, 2017).

In addition to regional emissions reductions and plant closures, additional local reductions to both direct $PM_{2.5}$ and SO_2 emissions are expected to occur and should contribute to further declines in Allegheny County's $PM_{2.5}$ monitor concentrations. For example, significant SO_2 reductions have recently occurred at US Steel's integrated steel mill facilities in southern Allegheny County as part of a 1-hr SO_2 NAAQS SIP.[8] Reductions are largely due to declining sulfur content in the Clairton Coke Work's coke oven gas (COG). Because this COG is burned at US Steel's Clairton Coke Works, Irvin Mill, and Edgar Thompson Steel Mill, these reductions in sulfur content should contribute to much lower $PM_{2.5}$ precursor emissions in the immediate future. The Allegheny SO_2 SIP also projects lower SO_2 emissions resulting from vehicle fuel standards, reductions in general emissions due to declining population in the Greater Pittsburgh region, and several shutdowns of significant sources of emissions in Allegheny County.

EPA modeling projections, the recent downward trend in local and upwind emissions reductions, the expected continued downward trend in emissions between 2017 and 2021, and the downward trend in monitored $PM_{2.5}$ concentrations all indicate that the Liberty monitor will attain and be able to maintain the 2012 annual $PM_{2.5}$ NAAQS by 2021. *See* proposed approval of the Ohio Infrastructure SIP (82 FR 57689).

As noted in the 2016 memorandum, several states have had recent data-quality issues identified as part of the $PM_{2.5}$ designations process. In particular, some ambient $PM_{2.5}$ data for certain time periods between 2009 and 2013 in Florida, Illinois, Idaho, Tennessee, and Kentucky did not meet all data-quality requirements under 40 CFR part 50, appendix L. The lack of data means that the relevant areas in those states could potentially be in nonattainment or be maintenance receptors in 2021. However, as mentioned above, EPA's analysis for the 2011 CSAPR rulemaking with respect to the 2006 $PM_{2.5}$ NAAQS determined that Maine's impact to all these downwind receptors would be well below the 1% contribution threshold for this NAAQS. That conclusion informs the analysis of Maine's contributions for purposes of the 2012 $PM_{2.5}$ NAAQS as well. Given this, and the fact that the state's $PM_{2.5}$ design values for all ambient monitors have been well below the 2012 24-hour NAAQS (35 $\mu g/m^3$) and the annual $PM_{2.5}$ NAAQS (12.0 $\mu g/m^3$) since 2005–2007,[9] EPA concludes that it is highly unlikely that Maine significantly contributes to nonattainment or interferes with maintenance of the 2012 $PM_{2.5}$ NAAQS in areas with data-quality issues.

Information in Maine's July 2016 SIP submission corroborates EPA's proposed conclusion that Maine's SIP meets its Good Neighbor obligations. The state's technical analysis in that submission includes 2012–2014 design values for monitors in Maine, actual and projected $PM_{2.5}$ emissions from 2002 through 2020 for various source categories for Maine, and results of EPA CSAPR modeling. As mentioned above, the state's $PM_{2.5}$ design values for all ambient monitors have been well below the 2012 $PM_{2.5}$ NAAQS since 2005–2007. In addition, the 24-hour and annual design values for all monitors in the neighboring and nearby states of New Hampshire, Massachusetts, and Vermont also have been below the 2012 $PM_{2.5}$ NAAQS since 2005–2007.

At specific monitors in Maine, the highest 24-hour mean value satisfying minimum data completion criteria was 25 $\mu g/m^3$ in 2016 at a monitor in Rumford in Oxford County. The highest annual mean value satisfying minimum data completion criteria was 9 $\mu g/m^3$ in 2014 at a monitor in Madawaska in Aroostook County.[10]

Second, Maine's sources are well-controlled. Maine's July 2016 submission indicates that the state has many SIP-approved rules and programs that limit emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors and the interstate transport of pollution, including 06–096 Code of Maine Regulations (CMR) Chapter 102, ''Open Burning Regulation'' (73 FR 9459, February 21, 2008); 06–096 CMR Chapter 103, ''Fuel Burning Equipment Particulate Emission Standard'' (50 FR 7770, February 26, 1985); and Chapter 145, ''NO_X Control Program'' (70 FR 11879, March 10, 2005), as well the state's Title V permitting program (38 MRSA § 353–A; 06–096 CMR Chapter 140, which was approved by EPA on October 18, 2001 (66 FR 52874)).

It should also be noted that Maine is not in the CSAPR program because EPA analyses show that the state does not emit NO_X at a level that contributes significantly to non-attainment or interferes with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in any other state.

For the reasons explained herein, EPA agrees with Maine's conclusions and proposes to determine that Maine will not significantly contribute to nonattainment or interfere with maintenance of the 2012 $PM_{2.5}$ NAAQS

[8] *http://www.achd.net/air/pubs/SIPs/SO2_2010_NAAQS_SIP_9-14-2017.pdf.*

[9] Maine's $PM_{2.5}$ design values for all ambient monitors from 2005–2007 through 2013–2015 are available on the Design Value Reports at *https://19january2017snapshot.epa.gov/air-trends/air-quality-design-values_.html.*

[10] 24-hour and annual $PM_{2.5}$ monitor values for individual monitoring sites throughout Maine are available at *www.epa.gov/outdoor-air-quality-data/monitor-values-report.*

in any other state. Therefore, EPA is proposing to approve the July 2016 infrastructure SIP submission from Maine with regard to prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2012 $PM_{2.5}$ NAAQS.

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

To prevent significant deterioration of air quality, this sub-element requires SIPs to include provisions that prohibit any source or other type of emissions activity in one state from interfering with measures that are required in any other state's SIP under Part C of the CAA. One way for a state to meet this requirement, specifically with respect to in-state sources and pollutants that are subject to PSD permitting, is through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. For in-state sources not subject to PSD, this requirement can be satisfied through a fully-approved nonattainment new source review (NNSR) program with respect to any previous NAAQS. EPA last approved revisions to Maine's NNSR regulations on February 14, 1996 (61 FR 5690).

To meet the requirements of Prong 3, Maine DEP cites to its PSD permitting programs under 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations,'' to ensure that new and modified major sources of $PM_{2.5}$, SO_2, and NO_X emissions do not contribute significantly to nonattainment, or interfere with maintenance, of those standards. As noted above in our discussion of Element C, Maine's PSD program fully satisfies the requirements of EPA's PSD implementation rules. Consequently, we are proposing to approve Maine's infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS related to section 110(a)(2)(D)(i)(II) Prong 3 for the reasons discussed under Element C.

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

With regard to applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional-haze program requirements under part C of the CAA (which includes sections 169A and 169B). EPA's 2009, 2011, and 2013 memoranda recommend that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. A fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will 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. EPA approved Maine's Regional Haze SIP on April 24, 2012 (77 FR 24385). Accordingly, EPA proposes that Maine has met the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2012 $PM_{2.5}$ NAAQS.

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

This sub-element requires each SIP to contain provisions requiring compliance with requirements of section 126 relating to interstate pollution abatement. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources.

EPA-approved regulations require the Maine DEP to provide pre-construction notice of new or modified sources to, among others, ''any State . . . whose lands may be affected by emissions from the source or modification.'' See 06–096 CMR Chapter 115, § IX(E)(3), approved March 23, 1993 (58 FR 15422). Such notice ''shall announce availability of the application, the Department's preliminary determination in the form of a draft order, the degree of increment consumption that is expected from the source or modification, as well as the opportunity for submission of written public comment.'' 06–096 CMR Chapter 115, § IX(E)(2). These provisions are consistent with EPA's PSD regulations and require notice to affected states of a determination to issue a draft PSD permit. Regarding section 126(b), no source or sources within the state are the subject of an active finding with respect to the 2012 $PM_{2.5}$ NAAQS. Consequently, EPA proposes to approve Maine's infrastructure SIP submittals for this sub-element with respect to the 2012 $PM_{2.5}$ NAAQS.

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

This sub-element requires each SIP to contain provisions requiring compliance with the applicable requirements of CAA § 115 relating to international pollution abatement. There are no final findings under section 115 against Maine with respect to the 2012 $PM_{2.5}$ NAAQS. Therefore, EPA proposes that Maine has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 for the 2012 $PM_{2.5}$ NAAQS.

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

This section requires each state to provide for personnel, funding, and legal authority under state law to carry out its SIP and related issues. In addition, 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 implementation of SIP obligations with respect to relevant NAAQS. This last sub-element, however, is inapplicable to this action, because Maine does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

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

Maine, through its infrastructure SIP submittal, has documented that its air agency has authority and resources to carry out its SIP obligations. Maine cites to 38 MRSA § 341–A, ''Department of Environmental Protection,'' 38 MRSA § 341–D, ''Board responsibilities and duties,'' 38 MRSA § 342, ''Commissioner, duties'' and 38 MRSA § 581, ''Declaration of findings and intent.'' These statutes provide the Maine DEP with the legal authority to enforce air pollution control requirements and carry out SIP obligations with respect to the 2012 $PM_{2.5}$ NAAQS. Additionally, state law provides Maine DEP with the authority to assess preconstruction permit fees and annual operating permit fees from air emissions sources and establishes a general revenue reserve account within the general fund to finance the state clean air programs. Maine also receives CAA sections 103 and 105 grant funds through Performance Partnership Grants along with required state-matching funds to provide funding necessary to carry out SIP requirements. Maine DEP states that these funding sources provide it with adequate resources to carry out the SIP. Therefore, EPA proposes that Maine has met the infrastructure SIP requirements of this

portion of section 110(a)(2)(E) with respect to the 2012 $PM_{2.5}$ NAAQS.

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

Section 110(a)(2)(E) also requires each SIP to provide requirements that the State comply with the state board requirements of section 128 of the CAA. Section 128(a) contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

As mentioned earlier, the Maine DEP consists of a Commissioner and a Board of Environmental Protection (''BEP'' or ''Board''), which is an independent authority under state law that reviews certain permit applications in the first instance and also renders final decisions on appeals of permitting actions taken by the Commissioner as well as some enforcement decisions by the Commissioner. Because the Board has authority under state law to hear appeals of some CAA permits and enforcement orders, EPA considers that the Board has authority to ''approve'' those permits or enforcement orders, as recommended in the 2013 Memorandum, and that the requirement of CAA § 128(a)(1) applies to Maine—that is, that ''any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter.''

Pursuant to state law, the BEP consists of seven members appointed by the Governor, subject to confirmation by the State Legislature. *See* 38 MRSA § 341–C(1). The purpose of the Board ''is to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions.'' *Id.* § 341–B. State law further provides that Board members ''must be chosen to represent the broadest possible interest and experience that can be brought to bear on the administration and implementation of'' Maine's environmental laws and that ''[a]t least 3 members must have technical or scientific backgrounds in environmental issues and no more than 4 members may be residents of the same congressional district.'' *Id.* § 341–C(2). EPA proposes to find that these provisions fulfill the requirement that at least a majority of Board members represent the public interest, but do not address the requirement that at least a majority ''not derive any significant portion of their income from persons subject to'' air permits and enforcement orders. Furthermore, section 341–C is not currently in Maine's SIP. By letter dated March 1, 2018 (extended to apply to the 2012 $PM_{2.5}$ NAAQS in an email dated July 17, 2018), DEP committed to revise section 341–C to address the CAA § 128(a)(1) requirement that at least a majority of Board members ''not derive a significant portion of their income from persons subject to'' air permits or enforcement orders and to submit, for inclusion in the SIP, the necessary provisions to EPA within one year of EPA final action on its infrastructure SIPs for the 2008 lead (Pb), 2008 ozone, and 2010 nitrogen dioxide (NO_2) NAAQS. Final action on these SIPs was published on June 18, 2018 (83 FR 28157). Consequently, EPA proposes to conditionally approve Maine's infrastructure SIP submittal for this requirement of CAA § 128(a)(1) for the 2012 $PM_{2.5}$ NAAQS.

As noted above, section 128(a)(2) of the Act provides that ''any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.'' As EPA has explained in other infrastructure SIP actions, the purpose of section 128(a)(2) is to assure that conflicts of interest are disclosed by the ultimate decision maker in permit or enforcement order decisions. *See, e.g.,* 80 FR 42446, 42454 (July 17, 2015). Although the Board is the ultimate decision maker on air permitting decisions in Maine, certain air enforcement orders of the DEP Commissioner are not reviewable by the Board, but rather may be appealed directly to Maine Superior Court. For this reason, EPA interprets the conflict of interest requirement of CAA § 128(a)(2) to be applicable in Maine to *both* Board members *and* the DEP Commissioner.

In a recent infrastructure SIP action for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS, EPA determined that Maine's conflict of interest statute, 5 MRSA § 18, and a provision explicitly making it applicable to Board members, 38 MRSA § 341–C(7), together satisfy the CAA § 128(a)(2) requirement for Maine with respect to Board members, and EPA approved both statutes into the Maine SIP. 83 FR 28157 (June 18, 2018). For more information, see 83 FR 12905, 12912 (March 26, 2018). EPA proposes that Maine's SIP also satisfies CAA § 128(a)(2) with respect to Board members for the 2012 $PM_{2.5}$ NAAQS for the same reasons discussed in the infrastructure SIP action for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

Regarding the DEP Commissioner, state law at 38 MRSA § 341–A(3)(D) also explicitly makes that official subject to 5 MRSA § 18, the same conflict-of-interest statute to which the Board is subject. In the above-referenced infrastructure SIP action, EPA also determined that together 5 MRSA § 18 (which is in the Maine SIP) and 38 MRSA § 341–A(3)(D) (which is not currently in the SIP) satisfy the conflict of interest requirement with respect to the DEP Commissioner. *See* 83 FR 28157; 83 FR 12905, 12912. For the same reasons discussed in the infrastructure SIP action for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS, EPA proposes that together the two state statutes would also satisfy the conflict of interest requirement with respect to the DEP Commissioner for the 2012 $PM_{2.5}$ NAAQS. While 38 MRSA § 341–A(3)(D) is not currently in the SIP, Maine DEP has already committed to submitting it to EPA for inclusion within one year of EPA's final action on Maine's infrastructure SIP submissions for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. *See* 83 FR 28157. Consequently, EPA proposes to conditionally approve Maine's infrastructure SIP submissions for the conflict of interest requirement of CAA § 128(a)(2) with respect to the DEP Commissioner for the 2012 $PM_{2.5}$ 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. Lastly, the reports shall be available at reasonable times for public inspection.

Maine's infrastructure submittal references several existing state regulations previously approved by EPA that require sources to monitor emissions and submit reports. The first reference is to 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations.'' This regulation contains compliance assurance requirements for licensed sources and stipulates that licenses shall include the following compliance assurance elements: (a) A description of all required monitoring and analysis procedures or test methods required under the requirements applicable to the source; (b) A description of all recordkeeping requirements; and (c) A description of all reporting requirements. The second reference is to 06–096 CMR Chapter 117, ''Source Surveillance.'' This regulation specifies which air emission sources are required to operate continuous emission monitoring systems (CEMS) and details the performance specifications, quality assurance requirements and procedures for such systems, and subsequent record keeping and reporting requirements. In addition, Maine cites its regulations implementing its operating permit program pursuant to 40 CFR part 70: 06–096 CMR Chapter 140, ''Part 70 Air Emission License Regulations.'' These regulations, although not in the SIP, identify the sources of air emissions that require a Part 70 air emission license and incorporate the requirements of Title IV and Title V of the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.,* and 38 MRSA §§ 344 and 590. Chapter 140 contains compliance assurance requirements regarding monitoring and reporting for licensed sources requiring a Part 70 air emission license. The regulation was approved by EPA on October 18, 2001 (66 FR 52874). While Chapter 140 and the referenced provisions of Chapter 115 are not formally approved into Maine's SIP, they are legal mechanisms the state can use to assure the enforcement of the monitoring requirements approved in the SIP.

Regarding the section 110(a)(2)(F) requirements that the SIP provide for the correlation and public availability of emission reports, Maine's emission statement rule, Chapter 137, requires facilities to report emissions of air pollutants on an annual basis. The DEP uses a web-based electronic reporting system, the Maine Air Emissions Inventory Reporting System (''MAIRIS''), for this purpose that allows it to package and electronically submit reported emissions data to EPA under the national emission inventory (NEI) program. NEI data are available to the public. *See www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei.* The MAIRIS system is structured to electronically correlate reported emissions with permit conditions and other applicable standards, and identify all inconsistencies and potential compliance concerns.

Furthermore, pursuant to DEP's EPA-approved regulations, ''Except as expressly made confidential by law; the commissioner shall make all documents available to the public for inspection and copying including the following: 1. All applications or other forms and documents submitted in support of any license application: 2. All correspondence, into or out of the Department, and any attachments thereto . . . .'' *See* 06–096 CMR Chapter 1, § 6(A). Furthermore, ''The Commissioner shall keep confidential only those documents which may remain confidential pursuant to 1 MRSA Section 402.'' *Id.* § 6(B). In its July 6, 2016, submittal, DEP certified that, ''[e]xcept as specifically exempted by the Maine statute (1 MRSA Chapter 13 Public Records and Proceedings), Maine makes all records, reports or information obtained by the MEDEP or referred to at public hearings available to the public.'' Maine DEP further certified therein that the information submitted to Maine DEP is ''available to the public at reasonable times for public inspection pursuant to Maine law.'' By letter dated March 1, 2018 (extended to apply to the 2012 $PM_{2.5}$ NAAQS in an email dated July 17, 2018), Maine further certified that Maine's Freedom of Access law does not include any exceptions that apply to stationary source emissions. For these reasons, we propose to find that Maine satisfies the requirement that emissions statements be available at reasonable times for public inspection.

Finally, in the March 1, 2018, letter (extended to apply to the 2012 $PM_{2.5}$ NAAQS in an email dated July 17, 2018), DEP also certified that there are no provisions in Maine law that would prevent the use of any credible evidence of noncompliance, as required by 40 CFR 51.212. *See also* 06–096 CMR Chapter 140, § 3(E)(7)(a)(v) (''Notwithstanding any other provision in the State Implementation Plan approved by the EPA or Section 114(a) of the CAA, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any statute, regulation, or Part 70 license requirement.''). For the above reasons, EPA proposes to approve Maine's submittals for this requirement of section 110(a)(2)(F) for the 2012 $PM_{2.5}$ NAAQS.

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

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

We propose to find that a combination of state statutes and regulations discussed in Maine DEP's July 6, 2016, submittal and a March 1, 2018, letter (extended to apply to the 2012 $PM_{2.5}$ NAAQS in an email dated July 17, 2018) provides for authority comparable to that given the Administrator in CAA section 303, as explained below. First, 38 MRSA § 347–A, ''Emergency Orders,'' provides that ''[w]henever it appears to the commissioner, after investigation, that there is a violation of the laws or regulations [DEP] administers or of the terms or conditions of any of [DEP's] orders that is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger.'' *See* 38 MRSA § 347–A(3). Section 347–A further authorizes the DEP Commissioner to initiate an enforcement action in state court in the event of a violation of such emergency order issued by the Commissioner. *Id.* § 347–A(1)(A)(4). Similarly, 38 MRSA § 348, ''Judicial Enforcement,'' authorizes Maine DEP to institute injunction proceedings ''[i]n the event of a violation of any provision of the laws administered by [DEP] or of any order, regulation, license, permit, approval, administrative consent agreement or decision of the board or commissioner.'' *Id.* § 348(1). Section 348 also authorizes Maine DEP to seek a court order to a restrain a source if it ''finds that the discharge, emission or deposit of any materials into any waters,

air or land of th[e] State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property.'' *Id.* § 348(3). Thus, these provisions authorize Maine DEP to issue an administrative order or to seek a court order to restrain any source from causing or contributing to emissions that present an imminent and substantial endangerment to public health or welfare, or the environment, if there is also a violation of a law, regulation, order, or permit administered or issued by DEP, as the case may be.

Second, in its March 1, 2018, letter, Maine DEP also cites to 38 MRSA § 591, ''Prohibitions,'' as contributing to its authority. Section 591 provides that ''[n]o person may discharge air contaminants into ambient air within a region in such manner as to violate ambient air quality standards established under this chapter or emission standards established pursuant to section 585, 585–B or 585–K.'' In those cases where emissions of $PM_{2.5}$, or $PM_{2.5}$ precursors may be causing or contributing to an ''imminent and substantial endangerment to public health or welfare, or the environment,'' a violation of § 591 would also occur, since Maine law provides that ambient air quality standards are designed to prevent ''air pollution,'' *id.* § 584, which state law expressly defines as ''the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration *as to be injurious to human, plant or animal life or to property,* or which unreasonably interfere with the enjoyment of life and property,'' *id.* § 582(3) (emphasis added). In its March 1, 2018, letter, Maine further explains that sections 347–A and 591 ''together authorize the Commissioner to issue an emergency order upon finding an apparent violation of DEP laws or regulations to address emissions of criteria pollutants, air contaminants governed by standards promulgated under section 585, and hazardous air pollutants governed by standards promulgated under section 585–B.''

Third, in the unlikely event that air emissions are creating a substantial or immediate threat to the public health, safety or to the environment without violating any DEP law, regulation, order, or permit, emergency authority to issue an order to restrain a source may also be exercised pursuant to 37–B MRSA § 742, ''Emergency Proclamation.'' Maine explains that the DEP Commissioner can notify the Governor of an imminent ''disaster,'' and the Governor can then exercise authority to ''declare a state of emergency in the State or any section of the State.'' *See* 37–B MRSA § 742(1)(A). State law defines ''disaster'' in this context to mean ''the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause, including, but not limited to . . . air contamination.'' *Id.* § 703(2). Upon the declaration of a state of emergency, the Governor may, among other things, ''[o]rder the termination, temporary or permanent, of any process, operation, machine or device which may be causing or is understood to be the cause of the state of emergency,'' *id.* § 742(1)(C)(11), or ''[t]ake whatever action is necessary to abate, clean up or mitigate whatever danger may exist within the affected area,'' *id.* § 742(1)(C)(12). Thus, even if there may otherwise be no violation of a DEP-administered or -issued law, regulation, order, or permit, state authorities exist to restrain the source.

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

Section 110(a)(2)(G) also requires a state to submit for EPA approval a contingency plan (also known as an emergency episode plan) to implement the air agency's emergency episode authority for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II for certain pollutants. *See* 40 CFR 51.150. For classifications for Maine, see 40 CFR 52.1021. AQCRs classified as Priority III do not require contingency plans. *See* 40 CFR 51.152(c). In general, contingency plans for Priority I, IA, and II areas must meet the applicable requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (''Prevention of Air Pollution Emergency Episodes'') for the relevant NAAQS, if the NAAQS is covered by those regulations. In the case of $PM_{2.5}$, EPA has not promulgated regulations that provide the ambient levels to classify different priority levels for the 2012 standard (or any $PM_{2.5}$ NAAQS). For the 2006 $PM_{2.5}$ NAAQS, EPA's 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. EPA's review of Maine's certified air quality data in AQS indicates that the highest 24-hour $PM_{2.5}$ level recorded since 2006 was 83.3 $\mu g/m^3$, which occurred in 2017 in the town of Madawaska in Aroostook County.[11] Therefore, EPA proposes that a specific contingency plan from Maine for $PM_{2.5}$ is not necessary. Furthermore, although not expected, if $PM_{2.5}$ conditions in Maine were to change, Maine DEP has general authority to order a source to reduce or discontinue air pollution as required to protect the public health or safety or the environment, as discussed earlier. In addition, as a matter of practice, Maine posts on the internet daily forecasted $PM_{2.5}$ levels through the EPA AirNow and EPA Enviroflash systems. Information regarding these two systems is available on EPA's website at *www.airnow.gov.* When levels are forecast to exceed the 24-hour $PM_{2.5}$ standard in Maine, notices are sent out to Enviroflash participants, the media are alerted via a press release, and the National Weather Service (NWS) is alerted to issue an Air Quality Advisory through the normal NWS weather alert system. These actions are similar to the notification and communication requirements for contingency plans in 40 CFR 51.152.

Therefore, EPA proposes that Maine, through the combination of statutes and regulations discussed above and participation in EPA's AirNow program, meets the applicable infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2012 $PM_{2.5}$ NAAQS.

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

This section requires that a state's SIP provide for revision from time to time as may be necessary to take into account changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate.

To address this requirement, Maine's infrastructure submittal references 38 MRSA § 581, ''Declaration of findings and intent,'' which characterizes the state's laws regarding the Protection and Improvement of Air as an exercise of ''the police power of the State in a coordinated state-wide program to

[11] 24-hour and annual $PM_{2.5}$ monitor values for individual monitoring sites throughout Maine are available at *www.epa.gov/outdoor-air-quality-data/monitor-values-report.*

control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of all of the citizens of the State; protects property values and protects plant and animal life.'' In addition, we note that Maine DEP is required by statute to ''prevent, abate and control the pollution of the air [, to] preserve, improve and prevent diminution of the natural environment of the State [, and to] protect and enhance the public's right to use and enjoy the State's natural resources.'' *See* 38 MRSA § 341–A(1). Furthermore, Maine DEP is authorized to ''adopt, amend or repeal rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering.'' *Id.* § 341–H(2); *see also id.* § 585–A (recognizing DEP's rulemaking authority to propose SIP revisions). These general authorizing statutes give Maine DEP the power to revise the Maine SIP from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate.

Consequently, EPA proposes that Maine meets the infrastructure SIP requirements of CAA section 110(a)(2)(H) for the 2012 $PM_{2.5}$ NAAQS.

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

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas. EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

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

The evaluation of the submission from Maine with respect to the requirements of CAA section 110(a)(2)(J) is described below.

Sub-Element 1: Consultation With Government Officials

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

Pursuant to state law, Maine DEP is authorized to, among other things, ''educate the public on natural resource use, requirements and issues.'' *See* 38 MRSA § 341–A(1). State law further provides that one of the purposes of the BEP is ''to provide for credible, fair and responsible public participation in department decisions,'' *id.* § 341–B, and authorizes it to ''cooperate with other state or federal departments or agencies to carry out'' its responsibilities, *id.* § 341–F(6). Furthermore, pursuant to Maine's EPA-approved regulations, Maine DEP is required to provide notice to relevant municipal officials and FLMs, among others, of DEP's preparation of a draft permit for a new or modified source. *See* 06–096 CMR Chapter 115, § IX(E)(3) (approved March 23, 1993 (58 FR 15422)). In addition, with respect to area reclassifications to Class I, II, or III for PSD purposes, the DEP is required to offer an opportunity for a public hearing and to consult with appropriate FLMs. *See* 38 MRSA § 583–B; 06–096 CMR Chapter 114, § 1(E). Maine's Transportation Conformity rule at 06–096 CMR Chapter 139 also provides procedures for interagency consultation, resolution of conflicts, and public consultation and notification. Finally, the Maine Administrative Procedures Act (Maine Revised Statutes Title 5, Chapter 375, subchapter 2) requires notification and provision of comment opportunities to all parties affected by proposed regulations. All SIP revisions undergo public notice and opportunity for hearing, which allows for comment by the public, including local governments.

EPA proposes that Maine has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 $PM_{2.5}$ 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, advise the public of health hazards associated with exceedances, and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

As mentioned elsewhere in this notice, state law directs Maine DEP to, among other things, ''prevent, abate and control the pollution of the air . . . improve and prevent diminution of the natural environment of the State[, and] protect and enhance the public's right to use and enjoy the State's natural resources.'' *See* 38 MRSA § 341–A(1). State law also authorizes Maine DEP to ''educate the public on natural resource use, requirements and issues. *Id.* § 341–A(1). To that end, Maine DEP makes real-time and historical air quality information available on its website.

The agency also provides extended-range air-quality forecasts, which give the public advanced notice of air quality events. This advance notice allows the public to limit their exposure to unhealthy air and enact a plan to reduce pollution at home and at work. Maine DEP forecasts daily ozone and particle levels and issues these forecasts to the media and to the public via its website, telephone hotline, and email. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions and to reduce the public's exposure. In addition, Air Quality Data Summaries of the year's air-quality monitoring results are issued annually and posted on the Maine DEP Bureau of Air Quality website. Maine is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs.

EPA proposes that Maine has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 $PM_{2.5}$ NAAQS.

Sub-Element 3: PSD

State plans must meet the applicable requirements of part C of the CAA related to PSD. Maine's PSD program in the context of infrastructure SIPs has already been discussed in sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and, as we have noted, fully satisfies the requirements of EPA's PSD implementation rules. Consequently, we propose to approve the PSD sub-element of section 110(a)(2)(J) for the 2012 $PM_{2.5}$ 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 memorandum, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIP submissions.

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

Section 110(a)(2)(K) of the Act requires that a SIP provide for the performance of such air quality modeling as the EPA Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which EPA has established a NAAQS, and the submission, upon request, of data related to such air quality modeling. EPA has published modeling guidelines at 40 CFR part 51, appendix W, for predicting the effects of emissions of criteria pollutants on ambient air quality. EPA has interpreted section 110(a)(2)(K) to require a state to submit or reference the statutory or regulatory provisions that provide the air agency with the authority to conduct such air quality modeling and to provide such modeling data to EPA upon request. *See* 2013 Memorandum at 55.

Maine state law implicitly authorizes Maine DEP to perform air quality modeling and provide such modeling data to EPA upon request. *See* 38 MRSA §§ 341–A(1), 581, 591–B. In addition, Maine cites 06–096 CMR Chapters 115 and 140, which provide that any modeling required for pre-construction permits and operating permits for minor and major sources be performed consistent with EPA-prescribed modeling guidelines at 40 CFR part 51, Appendix W. Chapters 115 and 140 also require that applicants submit data related to modeling to Maine DEP. *See* Email from Jeff Crawford, Maine DEP, to Alison Simcox, EPA (July 17, 2018). In its July 6, 2016, submission, Maine DEP further states that it performs modeling, provides modeling data to EPA upon request, and will continue to do both. Consequently, the SIP provides for such air quality modeling as the Administrator has prescribed and for the submission, upon request, of data related to such modeling.

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2012 $PM_{2.5}$ NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate that each major stationary source pay permitting fees sufficient to cover the reasonable cost of reviewing, approving, implementing, and enforcing a permit.

Maine implements and operates a Title V permit program, *see* 38 MRSA § 353–A; 06–096 CMR Chapter 140, which was approved by EPA on October 18, 2001 (66 FR 52874). To gain this approval, Maine demonstrated the ability to collect sufficient fees to run the program. *See* 61 FR 49289, 49291 (September 19, 1996). Maine state law provides for the assessment of application fees from air emissions sources for permits for the construction or modification of air contaminant sources and sets permit fees. *See* 38 MRSA §§ 353–A (establishing annual air emissions license fees), 352(2)(E) (providing that such fees ''must be assessed to support activities for air quality control including licensing, compliance, enforcement, monitoring, data acquisition and administration'').

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(L) for the 2012 $PM_{2.5}$ NAAQS.

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

To satisfy Element M, states must provide for consultation with, and participation by, local political subdivisions affected by the SIP. Maine's infrastructure submittal references the Maine Administrative Procedure Act, 5 MRSA Chapter 375, and explains that it requires public notice of all SIP revisions prior to their adoption, which allows for comment by the public, including local political subdivisions. In addition, Maine cites 38 MRSA § 597, ''Municipal air pollution control,'' which provides that municipalities are not preempted from studying air pollution and adopting and enforcing ''air pollution control and abatement ordinances'' that are more stringent than those adopted by DEP or that ''touch on matters not dealt with'' by state law. Finally, Maine cites Chapter 9 of Maine's initial SIP, which was approved on May 31, 1972 (37 FR 10842), and contains intergovernmental cooperation provisions.

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2012 $PM_{2.5}$ NAAQS.

IV

EPA proposes to approve Maine's July 6, 2016, infrastructure SIP submission certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2012 $PM_{2.5}$ NAAQS, with the exception of CAA section 110(a)(2)(E)(ii) regarding State Boards and Conflicts of Interest, which we propose to conditionally approve, as described in more detail above. EPA's proposed actions regarding these infrastructure SIP requirements are contained in Table 1 below.

Element	2012 $PM_{2.5}$
(A): Emission limits and other control measures.	A
(B): Ambient air quality monitoring and data system.	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD program for major sources and major modifications.	A
(C)3: PSD program for minor sources and minor modifications.	A
(D)1: Contribute to nonattainment/ interfere with maintenance of NAAQS.	A
(D)2: PSD	A
(D)3: Visibility Protection	A
(D)4: Interstate Pollution Abatement	A
(D)5: International Pollution Abatement.	A
(E)1: Adequate resources	A
(E)2: State boards	CA
(E)3: Necessary assurances with respect to local agencies.	NA
(F): Stationary source monitoring system.	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D.	NG
(J)1: Consultation with government officials.	A
(J)2: Public notification	A
(J)3: PSD	A
(J)4: Visibility protection	NG
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities.	A

In the above table, the key is as follows:

A	Approve.
CA	Conditionally approve.
NA	Not applicable.
NG	Not germane to infrastructure SIPs.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**. As noted in Table 1, EPA is proposing to conditionally approve one portion of Maine's July 2016 infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS pertaining to Element E(2) regarding State Boards and Conflicts of Interest.

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 State Board rules that fully remedies the deficiency mentioned above under element E. 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 Maine 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 submission. If EPA disapproves the new submittal, the conditionally approved infrastructure SIP elements will also be disapproved at that time. If EPA approves the submittal, the conditionally approved infrastructure SIP elements will be fully approved in their entirety and replace the conditionally approved program in the SIP.

If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: August 6, 2018.

Alexandra Dunn,

Regional Administrator, EPA Region 1.

[FR Doc. 2018–17247 Filed 8–10–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0060; FRL–9982–11—Region 5]

Air Plan Approval; Minnesota; Infrastructure SIP Requirements for the 2012 $PM_{2.5}$ NAAQS; Multistate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of the State Implementation Plan (SIP) submission from Minnesota regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS or standard). 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. This action pertains specifically to infrastructure requirements concerning interstate transport provisions.

DATES: Comments must be received on or before September 12, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0060 at *https://www.regulations.gov,* or via email to *blakley.pamela@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, 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. 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