Dayton areas which include Hamilton, Butler, Warren, Clermont, Clark, Greene, Miami, and Montgomery Counties.

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[FR Doc. 2011–17049 Filed 7–7–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2008–0639; EPA–R01–OAR–2008–0641; EPA–R01–OAR–2008–00642; EPA–R01–OAR–2008–0643; A–1–FRL–9431–2]

Approval and Promulgation of Implementation Plans; Connecticut, Maine, New Hampshire and Rhode Island; Infrastructure SIPs for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

DATES: *Effective Dates:* This rule will be effective August 8, 2011, with one exception. The conditional approval of one element of Connecticut's SIP is a direct final rule which will be effective September 6, 2011, unless EPA receives adverse comments on that action by August 8, 2011.

If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, if any, on EPA's direct final conditional approval for Connecticut, identified by Docket ID Number EPA–R01–OAR–200–0639 by one of the following methods:

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

2. *E-mail: arnold.anne@epa.gov* Fax: (617) 918–0047. Mail: ''Docket Identification Number EPA–R01–OAR–2008–0639'', Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912

3. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments for Connecticut to Docket ID No. EPA–R01–OAR–2008–0639. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov*, or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

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

SUPPLEMENTARY INFORMATION:

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I. Background

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

On October 2, 2007, EPA issued a guidance document entitled, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997

8-hour Ozone and fine particle ($PM_{2.5}$) National Ambient Air Quality Standards.'' This guidance noted that to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only certify that fact via a letter to EPA.

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

On March 23, 2011, EPA proposed to approve the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions for the 1997 8-hour ozone NAAQS. *See* 76 FR 16358. A summary of the background for today's final actions is provided below. See EPA's March 23, 2011, proposed rulemaking at 76 FR 16358 for more detail.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below: [1]

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

II. Scope of Action on Infrastructure Submissions

EPA is taking final action to approve the Connecticut, Maine, New Hampshire and Rhode Island SIPs as demonstrating that the respective States meet the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. Connecticut, Maine, New Hampshire and Rhode Island certified that the Connecticut, Maine, New Hampshire and Rhode Island SIPs contain provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in Connecticut, Maine, New Hampshire and Rhode Island, respectively. The Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions address all the required infrastructure elements for the 1997 8-hour ozone NAAQS. EPA has determined that the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions are consistent with section 110 of the CAA, with the exception of the Connecticut submission with respect to section 110(a)(2)(D)(ii). Therefore, EPA is taking final action to fully approve the submittals from Connecticut, Maine, New Hampshire and Rhode Island, with one exception. EPA is taking direct final action to conditionally approve Connecticut's submittal with respect to section 110(2)(D)(ii), as discussed further in Section III below. Additionally, EPA is responding to comments received on EPA's March 23, 2011 proposed approval of the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions.

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.[3] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (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''). EPA notes that there are two other substantive issues for which EPA likewise stated that it would address the issues separately: (i) existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80,186 (December 31, 2002), as amended by 72 FR 32,526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail, as explained in the notice of proposed rulemaking, on how the respective states' SIP addresses the requirements of section 110(a)(2)(C) not related to the part D permit program for nonattainment areas.

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas, if any.

[3] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[4] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[5]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[6] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[7] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be

[4] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[5] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule,'' 70 FR 25,162 (May 12, 2005)(defining, among other things, the phrase ''contribute significantly to nonattainment'').

[6] See, *e.g., Id.,* 70 FR 25,162, at 63–65 (May 12, 2005)(explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[8]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirement applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. [9] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [10] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [11] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [12] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the state's SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of

[8] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[9] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance''). EPA issued comparable guidance for the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[10] *Id.,* at page 2.

[11] *Id.,* at attachment A, page 1.

[12] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[13] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[14] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[15]

[13] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21,639 (April 18, 2011).

[14] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[15] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42,342 at 42,344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4,540 (Jan. 26, 2011) (final disapproval of such provisions).

III. EPA's Response to Comments

EPA received one set of comments (from the Law Office of Robert Ukeiley, hereinafter referred to as ''the Commenter'') on the March 23, 2011, proposed rulemaking to approve revisions to the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions as meeting the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS. Generally, the Commenter's concerns relate to whether EPA's approval of the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions are in compliance with section 110(l) of the CAA, and whether EPA's approval will interfere with the states' compliance with the CAA's prevention of significant deterioration (PSD) requirements. In addition, the commenter has concerns with how the Connecticut SIP addresses the element required by section 110(a)(2)(D)(ii). The comments are provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

Comment 1: Under the header ''No Clean Air Act Section 110(l) analysis,'' the Commenter states ''Before providing the technical analysis for why finalizing this proposed rule would be contrary to the Clean Air Act, I wish to point out that it is 2011 and EPA has yet to ensure that these areas have plans to meet the 1997 National Ambient Air Quality Standard (NAAQS) for ozone.'' The Commenter goes on to state that ''EPA acknowledged that the science indicates that the 1997 NAAQS, which is effectively 85 parts per billion (ppb), does not protect people's health or welfare when in 2008, EPA set a new ozone NAAQS at 75 ppb.''

Response 1: As noted in EPA's proposed rulemaking on the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions and in today's final rulemaking, the very action that EPA is undertaking is a determination that Connecticut, Maine, New Hampshire and Rhode Island have plans to ensure compliance with the 1997 8-hour ozone NAAQS. The level of the 1997 ozone NAAQS is 0.08 parts per million (ppm) on an 8-hour average basis. The Connecticut, Maine, New Hampshire and Rhode Island submissions predate the release of the recent revision to the 8-hour ozone NAAQS on March 12, 2008, and are distinct from any plans that the States of Connecticut, Maine, New Hampshire and Rhode Island may provide to ensure compliance of the 2008 NAAQS. Our actions today are meant to address the 1997 ozone infrastructure requirements under Section 110 of the Act. EPA does not have before us the Section 110 infrastructure requirements for the 2008 ozone NAAQS. Nevertheless, EPA has considered the 2008 8-hour ozone NAAQS to the extent that section 110(l) applies to this action and will expound on this consideration in Response 2 below. Further, EPA agrees that the Agency has made the determination that the 1997 8-hour ozone NAAQS is not as protective as needed for public health and welfare, and as the Commenter mentioned, the Agency established a new ozone NAAQS at a level of 0.075 ppm on an 8-hour average basis. However, EPA notes that the Agency is currently reconsidering the 2008 8-hour ozone NAAQS, and has not yet designated areas for any subsequent NAAQS.

Finally, while it is not clear which areas the Commenter refers to in stating ''EPA has yet to ensure these areas have plans to meet'' the 1997 ozone NAAQS, the comment may refer to the requirements under section 172, Part D, Title I of the Act for states with nonattainment areas for the 1997 ozone NAAQS to submit nonattainment plans. As discussed in our notice proposing approval of the Connecticut, Maine, New Hampshire and Rhode Island infrastructure SIP, submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA are outside the scope of this action, as such plans are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172.

In addition, all of Rhode Island (see 75 FR 64949, Oct. 21, 2010), New Hampshire (see 76 FR 14865, March 18, 2011), and Maine (see 71 FR 71489, Dec. 11, 2006) meet the 1997 ozone NAAQS. The Greater Connecticut 8-hour ozone nonattainment area also meets the 1997 ozone NAAQS (see 75 FR 53219, August 31, 2011). The remainder of the State of Connecticut also meets the 1997 ozone NAAQS based on 2007–2009 ozone data, but EPA has not yet made the formal determination in the **Federal Register**. In summary, all four states have ozone air quality that meets the 1997 ozone NAAQS.

Comment 2: Also under the header ''No Clean Air Act Section 110(l) analysis,'' the Commenter cites the section 110(l) CAA requirement, and states ''Clean Air Act § 110(l) requires 'EPA to evaluate whether the plan as revised will achieve the pollution reductions required under the Act, and

the absence of exacerbation of the existing situation does not assure this result.' *Hall* v. *EPA,* 273 F.3d 1146, 1152 (9th Cir. 2001).'' The Commenter goes on to state that ''* * * the Federal Register notices are devoid of any analysis of how these rule makings will or will not interfere with attaining, making reasonable further progress on attaining and maintaining the 75 ppb ozone NAAQS as well as the 1-hour 100 ppb nitrogen oxides NAAQS.''

Response 2: EPA agrees with the Commenter's assertion that consideration of section 110(l) of the CAA is necessary for EPA's action with regard to approving the states' submissions. However, EPA disagrees with the Commenter's assertion that EPA did not consider 110(l) in terms of the March 23, 2011, proposed action. Further, EPA disagrees with the Commenter's assertion that EPA's proposed March 23, 2011 action does not comply with the requirements of section 110(l). Section 110(l) provides in part that: ''[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter.'' EPA has consistently interpreted section 110(l) as not requiring a new attainment demonstration for every SIP submission. EPA has further concluded that preservation of the status quo air quality during the time new attainment demonstrations are being prepared will not interfere with a state meeting its obligations to develop timely attainment demonstrations. The following actions are examples of where EPA has addressed 110(l) in previous rulemakings: See 70 FR 53, 57 (January 3, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 28429, 28431 (May 18, 2005); and 70 FR 58119, 58134 (October 5, 2005). The Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions do not revise or remove any existing emissions limit for any NAAQS or any other existing substantive SIP provisions relevant to the 1997 8-hour ozone NAAQS or the 2010 nitrogen dioxide (NO_2) NAAQS. Simply put, the submissions do not make any substantive revision that could result in any change in emissions. As a result, the submissions do not relax any existing requirements or alter the status quo air quality. Therefore, approval of the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions will not interfere with attainment or maintenance of any NAAQS.

Comment 3: Under the header ''No Clean Air Act Section 110(l) analysis,'' the Commenter states that ''We are not required to guess what EPA's Clean Air Act 110(l) analysis would be. Rather, EPA must approve in part and disapprove in part these action and re-propose to approve the disapproved part with a Clean Air Act § 110(l) analysis.'' Further, the Commenter states that ''EPA cannot include its analysis in its response to comments and approve the actions without providing the public with an opportunity to comment on EPA's Clean Air Act § 110(l) analysis.''

Response 3: Please see Response 2 for a fuller explanation regarding EPA's response to the Commenter's assertion that EPA's action is not in compliance with section 110(l) of the CAA. EPA does not agree with the Commenter's assertion that EPA's analysis did not somehow consider section 110(l) and so, therefore, ''EPA must approve in part and disapprove in part these action [sic] and re-propose to approve the disapproved part with a Clean Air Act § 110(l) analysis.'' Every action that EPA takes to approve a SIP revision is subject to 110(l) and thus EPA's consideration of whether a state's submission ''* * * would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter'' is inherent in EPA's action to approve or disapprove a submission from a state. In the ''Proposed Action'' section of the March 23, 2010, rulemaking, EPA notes that EPA is proposing to approve the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions for the 1997 8-hour ozone NAAQS because these submissions are consistent with section 110 of the CAA. Section 110(l) is a component of section 110, so EPA believes that this provides sufficient notice that EPA considered section 110(l) for the proposed action and concluded that section 110(l) was not violated. Further, EPA does not agree with the Commenter's assertion that the Agency cannot provide additional clarification in response to a comment and take a final approval action without ''* * * providing the public with an opportunity to comment on EPA's Clean Air Act § 110(l) analysis.'' The Commenter does not cite any provision of the Act or other authority for the Commenter's assertion. In fact, the proposition that providing an analysis for the first time in response to a comment on a rulemaking somehow violates the public's opportunity to comment has been rejected by the DC Circuit Court of Appeals. *See Int'l Harvester Co.* v. *Ruckelshaus,* 478 F.2d 615, 632 n.51 (D.C. Cir. 1973). Furthermore, as mentioned above, EPA's approval of the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions does not make any substantive revision that could result in any change in emissions, so there is no further ''analysis'' beyond whether the state has adequate provisions in their SIPs to address the infrastructure requirements for the 1997 8-hour ozone NAAQS. EPA's March 23, 2011, proposed rulemaking goes through each of the relevant infrastructure requirements and provides detailed information on how the Connecticut, Maine, New Hampshire and Rhode Island SIPs address the relevant infrastructure requirements. Beyond making a general statement indicating that the Connecticut, Maine, New Hampshire and Rhode Island submissions are somehow not in compliance with section 110(l) of the CAA, the Commenter does not provide comments on EPA's detailed analysis of each infrastructure requirement to indicate that the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions for the 1997 8-hour ozone NAAQS are deficient in meeting these individual requirements. Therefore, EPA has no basis to question the Agency's determination that the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions meet the requirements for the infrastructure submission for the 1997 8-hour ozone NAAQS, including section 110(l) of the CAA.

Comment 4: Under the header ''No Clean Air Act Section 110(l) analysis,'' the Commenter further asserts that ''EPA's analysis must conclude that this proposed action would violation [sic] § 110(l) if finalized.'' An example given by the Commenter is as follows; ''For example, a 42 U.S.C. § 7502(a)(2)(J) public notification program based on a 85 [parts per billion (ppb)] ozone level interferes with a public notification program that should exist for a 75 ppb ozone level. At its worst, the public notification system would be notifying people that the air is safe when in reality, based on the latest science, the air is not safe. Thus, EPA would be condoning the states providing information that can physical[ly] hurt people.''

Response 4: EPA disagrees with the Commenter's statement that ''EPA's analysis must conclude that this proposed action would violation [sic] § 110(l) if finalized.'' As mentioned above, the Connecticut, Maine, New Hampshire and Rhode Island

infrastructure submissions do not revise or remove any existing emissions limit for any NAAQS, nor do they make any substantive revision that could result in any change in emissions. EPA has concluded that the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions do not relax any existing requirements or alter the status quo air quality. Therefore, approval of the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions will not interfere with attainment or maintenance of any NAAQS. See Response 2 and Response 3 above for a fuller discussion. Further, EPA disagrees with the Commenter's assertion that the section 110(a)(2)(J) requirement for public notification for the 1997 8-hour ozone NAAQS based on 85 ppb interferes with a public notification program that should exist for a 75 ppb ozone level, and * * * ''EPA would be condoning the states providing information that can physical[ly] hurt people.'' First, the 1997 8-hour ozone NAAQS is 0.08 ppm, which is effectively 0.084 ppm or 84 ppb due to the rounding convention, and not ''85 ppb'' as the Commenter mentioned. Second, EPA establishes the health-based NAAQS and provides extensive resources, technical analyses and support to the states to ensure compliance with the NAAQS to protect human health and the environment. As noted in Response 1, the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions were provided to address the 1997 8-hour ozone NAAQS and were submitted prior to EPA's promulgation of the 2008 8-hour ozone in March 2008. Thus, the States of Connecticut, Maine, New Hampshire and Rhode Island provided sufficient information at that time to meet the requirement for the 1997 8-hour ozone NAAQS which is the subject of this action.

As mentioned, in 2008, EPA issued revised 8-hour ozone NAAQS, which are currently under reconsideration. Infrastructure requirements for the 2008 (or a subsequent) NAAQS are distinct from these requirements for the 1997 8-hour ozone NAAQS. EPA continues to implement the 2008 ozone NAAQS for the purposes of health based air quality notification. When EPA promulgated the 2008 NAAQS (73 FR 16436, March 27, 2008), we revised the Air Quality Index (AQI) for ozone to show that at the level of the 2008 ozone NAAQS (0.075 ppm) the AQI is set to 100, which indicates ozone levels that are unhealthful for sensitive groups. It is this revised AQI that EPA uses to both forecast ozone levels and to provide notice to the public of current air quality. The EPA AIRNOW system uses the revised AQI as its basis for ozone. (See *http://www.airnow.gov.*) In addition when the States of Connecticut, Maine, New Hampshire and Rhode Island forecast ozone air quality and provide real-time ozone air quality information to the public, either through the AIRNOW system, or through their own (state-based) Internet system, the four states use the revised ozone AQI keyed to the 2008 revised ozone NAAQS.

Comment 5: Lastly, under the header ''No Clean Air Act Section 110(l) analysis,'' the Commenter asserts that ''if a SIP provides an ozone NAAQS of 85 ppb for PSD purposes, this interferes with the requirement that PSD programs require sources to demonstrate that they will not cause or contribute to a violation of a NAAQS because this requirement includes the current 75 ppb ozone NAAQS.''

Response 5: EPA believes that this comment gives no basis for concluding that EPA approval of the Connecticut, Maine, New Hampshire and Rhode Island infrastructure SIPs violate the requirements of section 110(l). EPA assumes that the comment refers to the requirement that owners and operators of sources subject to PSD demonstrate that the allowable emissions increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), will not cause or contribute to a violation of the NAAQS. 40 CFR 51.166(k)(1).

EPA further assumes that the Commenter's language ''if a SIP provides an ozone NAAQS of 85 ppb for PSD purposes'' refers to a hypothetical SIP-approved PSD program that only requires owners and operators of sources subject to PSD to make the demonstration discussed above for the 1997 ozone NAAQS, and not for the 2008 ozone NAAQS. However, the Commenter gives no indication that Connecticut, Maine, New Hampshire and Rhode Island's SIP-approved PSD program suffers from this alleged defect.

Furthermore, as discussed in detail above, the infrastructure SIP makes no substantive change to any provision of the Connecticut, Maine, New Hampshire and Rhode Island SIP-approved PSD programs, and therefore does not violate the requirements of section 110(l). Had these states submitted SIP revisions that substantively modified their PSD program to limit the required demonstration to just the 1997 ozone NAAQS, then the comment might have been relevant to a 110(l) analysis of that hypothetical SIP revision. However, in this case, the comment gives no basis for EPA to conclude that the four states' infrastructure SIPs would interfere with any applicable requirement of the Act.

In addition, all of Connecticut, Rhode Island, New Hampshire and Maine are in the Ozone Transport Region (OTR) (see CAA Section 184). For ozone and ozone precursors, all new or modified major sources in the OTR are covered by nonattainment new source review (NSR) regulations and must obtain offsets (at a greater than 1 to 1 ratio) for ozone precursors.[16] In summary, for OTR states, the PSD regulations for ozone do not apply and nonattainment NSR regulations require offsets consistent with the CAA's requirements to address the ambient impact of new source construction in these areas.

EPA concludes that approval of the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions will not make the status quo air quality worse and is in fact consistent with the development of an overall plan capable of meeting the Act's requirements. Accordingly, when applying section 110(l) to this submission, EPA finds that approval of Connecticut, Maine, New Hampshire and Rhode Island's infrastructure submissions is consistent with section 110 (including section 110(l)) of the CAA.

Comment 6: The Commenter provided comments on the lack of a designated air quality model to demonstrate that a PSD source will not cause or contribute to a violation of the ozone NAAQS. Specifically, the commenter stated:

> The SIP submittals do not comply with Clean Air Act 110(a)(2)(J), (K), and (D)(i)(II) because the SIP submittals do not identify a specific model to use in PSD permitting to demonstrate that a proposed source [or] modification will not cause or contribute to a violation of the ozone NAAQS. Many states abuse this lack of an explicitly named model by claiming that because no model is explicitly named, no modeling is required or use of completely irrelevant modeling (*e.g.* Kentucky using modeling from Georgia for the J.K. Smith proposed facility) is allowed.

To support the position as to the necessity of ''[w]hy and which model should be designated,'' the Commenter

[16] For portions of northern and downeast Maine EPA has granted a waiver for the ozone precursor oxides of nitrogen. (see 71 FR 5791, 2/3/06). This waiver was based on a finding that additional reductions in oxides of nitrogen in these areas would not produce net ozone air quality benefits in the ozone transport region. See 42 U.S.C. 7511a(f)(1)(B).

attached a petition [17] and incorporated this petition, and the exhibits to this petition, by reference in the submitted comments.

Response 6: The Commenter referred to the petition for rulemaking from Robert Ukeiley on behalf of the Sierra Club to designate air quality models to use for PSD permit applications with regard to ozone and $PM_{2.5}$. EPA is separately reviewing the July 28, 2010, ''Petition for Rulemaking to Designate Air Quality Models to Use for PSD Permit Applications with Regard to Ozone and $PM_{2.5}$,'' which requests that the EPA Administrator designate computer models to determine whether major sources of air pollution cause or contribute to violations of the ozone NAAQS and the $PM_{2.5}$ NAAQS and increments. Although the Commenter purports to incorporate the July 28, 2010 petition by reference, that petition arises in a different context, requests different relief, and raises distinct issues from those raised by the comment. EPA believes that the appropriate place to respond to the issues raised in the petition is in a direct response to the petition. Accordingly, this Response to the Comment is not a response to the July 28, 2010 petition, and the issues raised in that petition are being addressed under separate consideration.

Furthermore, the states included in this action are Connecticut, Maine, New Hampshire and Rhode Island. Since these states are in the Ozone Transport Region (OTR), they are required to, under Sections 182(f)(1) and 184(b) of the Clean Air Act, and in fact do, conduct nonattainment NSR for new major and modified major sources of ozone precursors.[18] Section 184(b)(2) requires major stationary sources of volatile organic compounds at the 50 ton per year level in the OTR to meet all ''the requirements which would be applicable to major stationary sources if the area were classified as a Moderate nonattainment area.'' Section 182(f)(1) has the effect of extending that requirement to major sources of nitrogen oxides at the 100 ton per year level in the OTR. Under the nonattainment NSR program, sources are not required to predict their ambient impacts using modeling. Rather, the program assumes the new or modified sources will contribute to nonattainment in the area. Accordingly, the program requires that these sources secure offsets for their new emissions at a ratio of at least 1.15 to 1 in the OTR. Thus, the offset requirement addresses the ambient impact element of NSR in these states for ozone precursors without reliance on any predictive modeling. Therefore, this comment regarding which model to use in the PSD modeling of single source's ozone precursors is not relevant to this action.

Comment 7: Under the heading ''CT's SIP must require notice to affected states,'' the Commenter states, ''CT's SIP is defective because its PSD regulations fail to require CT to give notice of PSD sources to affected states. 76 FR 16358, 16362 (Mar. 23, 2011). EPA must disapprove this defective provision. The fact that neighboring states have consistently obtained draft permits in the past does not justify approving an illegal SIP. It does not even make sense. To begin with, it is unlikely that EPA actually reviewed all PSD permits issued in the past to actually determine that proper notice was actually given by CT. In any event, CT could change its informal policy in the future, especially if there is a change in management in the agency or state.''

Response 7: Section 110(a)(2)(D)(ii) of the CAA requires SIPs to include provisions insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source. As noted in EPA's proposed approval (see 76 FR 16362), Connecticut's PSD regulations provide for notice to most of the parties consistent with the requirements in the EPA PSD program, although there is no specific mandate that affected states receive notice. As also noted in the proposed approval, Connecticut in fact issues extensive notice of its draft permits, and neighboring states consistently get copies on those drafts. However, EPA agrees with the commenter that the current Connecticut SIP does not explicitly require notice to affected states for some sources of air pollution. Subsequent to EPA's proposal, on May 2, 2011, EPA received a written commitment from the State of Connecticut to pursue regulatory revisions to Connecticut's PSD program to adopt a formal requirement to notify nearby states. Connecticut's letter also committed to continue to provide notice to nearby states while shepherding these regulatory revisions through the state process. Therefore, taking all of this information into consideration, EPA has decided to take direct final action to conditionally approve this element of the Connecticut SIP. Conditional approval is appropriate in this circumstance because the State has explicitly committed to continuing its practice of notifying affected states while it conforms its regulations to mandate that practice.

IV. Final Action

As described above, the Connecticut, Maine, New Hampshire and Rhode Island ozone infrastructure SIP submissions have addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007 guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in the respective state, except for one element in Connecticut. EPA is taking final action to approve the Connecticut, Maine, New Hampshire and Rhode Island infrastructure submissions for the 1997 8-hour ozone NAAQS because these submissions are consistent with section 110 of the CAA, except for the element required by section 110(a)(2)(D)(ii) in Connecticut.

EPA is conditionally approving the Connecticut submittal with respect to the requirement of CAA section 110(a)(2)(D)(ii). The State must submit to EPA by July 9, 2012 the revised PSD regulations requiring notification of nearby states. If the State fails to do so, this approval will become a disapproval on that date. 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 Connecticut SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved submittal will also be disapproved at that time. If EPA approves the new submittal, Connecticut's infrastructure SIP will be fully approved in its entirety and

[17] The Commenter attached the July 28, 2010, ''Petition for Rulemaking to Designate Air Quality Models to use for PSD Permit Applications with Regard to Ozone and $PM_{2.5}$,'' from Robert Ukeiley on behalf of the Sierra Club. That petition and the attached exhibits are available in the docket supporting this action.

[18] Note that EPA has granted a waiver from the requirements of 182(f) for the northern-most counties in Maine. EPA granted this waiver based on the finding required under 182(f)(1)(B) that ''additional reductions of oxides of nitrogen would not produce net ozone air quality benefits in [the OTR].'' EPA has determined for northern Maine that NOx emissions reductions are not necessary to attain or maintain the ozone NAAQS in the OTR. Therefore, EPA does not believe that the absence of a specified model in the PSD program for predicting ozone impacts from a NOx source in this particular area of the OTR is problematic.

replace the conditionally approved element 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).

The EPA is publishing this conditional approval without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to conditionally approve the Connecticut submittal with respect to CAA section 110(a)(2)(D)(ii) should relevant adverse comments be filed. This rule will be effective September 6, 2011 without further notice unless the Agency receives relevant adverse comments by August 8, 2011.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final conditional approval and informing the public that the conditional approval will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that the conditional approval will be effective on September 6, 2011 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 action:

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

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP either is not approved to apply in Indian country located in the state or does not alter the requirements of any state law that may already apply in Indian country. EPA notes that this approval will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 6, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: June 28, 2011.

Ira W. Leighton,

Acting, Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart H—Connecticut

■ 2. Section 52.377 is amended by adding paragraphs (g) and (h) to read as follows:

§ 52.377 Control strategy: Ozone.

* * * * *

(g) Approval—Submittal from the Connecticut Department of Environmental Protection, dated December 28, 2007, to address the Clean Air Act (CAA) infrastructure requirements for the 1997 ozone National Ambient Air Quality Standard (NAAQS). This submittal satisfies the requirements of CAA sections 110(a)(2)(A), (B), (C), (E), (F), (G), (H), (J), (K), (L), and (M).

(h) Conditional Approval—Submittal from the Connecticut Department of Environmental Protection, dated December 28, 2007, to address the Clean Air Act (CAA) infrastructure

requirements for the 1997 ozone National Ambient Air Quality Standard (NAAQS). On May 2, 2011, the State of Connecticut supplemented this submittal with a commitment to address the requirements of section 110(a)(2)(D)(ii) of the CAA that requires notification of affected states for Prevention of Significant Deterioration purposes. EPA is conditionally approving Connecticut's submittal with respect to CAA section 110(a)(2)(D)(ii).

Subpart U—Maine

■ 3. In § 52.1020, Table (e) is amended by adding a new entry at the end of the table to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(e) * * *

MAINE NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date [3]	Explanations
*	*	*	*	*
Submittal to meet Clean Air Act Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard.	State of Maine	January 3, 2008	July 8, 2011 ..... [Insert **Federal Register** page number where the document begins].	This action addresses the following Clean Air Act requirements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

Subpart EE—New Hampshire

■ 4. In § 52.1520, Table (e) is amended by adding a new entry at the end of the table to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(e) * * *

NEW HAMPSHIRE NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date [3]	Explanations
*	*	*	*	*
Submittal to meet Clean Air Act Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard.	State of New Hampshire.	December 14, 2007 ..	July 8, 2011 ..... [Insert **Federal Register** page number where the document begins].	This action addresses the following Clean Air Act requirements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

Subpart OO—Rhode Island

■ 5. In § 52.2070, Table (e) is amended by adding a new entry at the end of the table to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(e) * * *

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
*	*	*	*	*
Submittal to meet Clean Air Act Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard.	State of Rhode Island	December 14, 2007 ..	July 8, 2011 ..... [Insert **Federal Register** page number where the document begins].	This action addresses the following Clean Air Act requirements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2011–17021 Filed 7–7–11; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2011–0310; FRL–9434–4]

Approval and Promulgation of Implementation Plans; State of NE

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) submittal from the State of Nebraska addressing the requirements of Clean Air Act (CAA or Act) sections 110(a)(1) and (2) to implement, maintain, and enforce the 1997 revisions to the National Ambient Air Quality Standards (NAAQS) for ozone. The rationale for this action is explained in this notice and in more detail in the notice of proposed rulemaking for this action. EPA received no comments on the proposal.

DATES: *Effective Date:* This rule is effective August 8, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2011–0310. All documents in the docket are listed on the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 7, in the Air Planning and Development Branch of the Air and Waste Management Division, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance. The Regional Office official hours of business are Monday through Friday, 8:00 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Kramer, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101; *telephone number:* (913) 551–7186; *fax number:* (913) 551–7844; *e-mail address: kramer.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. These sections provide additional information on this final action:

Table of Contents

I. Background

On March 30, 2011 (76 FR 17592), EPA published a proposed rulemaking for the State of Nebraska. This rulemaking proposed approval of Nebraska's submittal dated December 7, 2007 as meeting the relevant and applicable requirements of CAA sections 110(a)(1) and (2) necessary to implement, maintain, and enforce the 1997 8-hour ozone NAAQS.

II. Summary of Relevant Submissions

The above referenced submittal addresses the infrastructure elements specified in CAA sections 110(a)(1) and (2). This submittal refers to the implementation, maintenance and enforcement of the 1997 8-hour ozone NAAQS. The rationale supporting EPA's proposed action is explained in the proposal and EPA incorporates by reference the rationale in the proposal, as supplemented by this notice, as its rationale for the final rule. No public comments were received on the proposed rulemaking.

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM2.5 NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.[1] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (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''). EPA notes that there are two other substantive issues for which EPA likewise stated that it would address the issues separately: (i) existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made

[1] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.