FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email), 202–693–9440 (voice); or 202–693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On June 8, 2016 (81 FR 36826), MSHA published a request for information (RFI) on Exposure of Underground Miners to Diesel Exhaust. The RFI sought input from the public that will help MSHA evaluate the Agency's existing standards and policy guidance on controlling miners' exposures to diesel exhaust and to evaluate the effectiveness of the protections now in place to preserve miners' health.

MSHA held four public meetings on the RFI in 2016 (81 FR 41486), and the comment period was scheduled to close on September 6, 2016; however, in response to requests from the public, MSHA extended the comment period until November 30, 2016 (81 FR 58424).

Also in response to requests from stakeholders during the comment period, MSHA and the National Institute for Occupational Safety and Health convened a Diesel Exhaust Health Effects Partnership (Partnership) with the mining industry, diesel engine manufacturers, academia, and representatives of organized labor to gather information regarding the complex questions contained in the RFI. The Partnership provides an opportunity for all relevant stakeholders from the mining community to come together to understand the health effects from underground miners' exposure to diesel exhaust. The Partnership also provides stakeholders an opportunity to consider best practices and new technologies, including engineering controls that enhance control of diesel exhaust exposures to improve protections for miners.

The first meeting of the Partnership was held on December 8, 2016, in Washington, Pennsylvania; and the second meeting was held on September 19, 2017, in Triadelphia, West Virginia. During the comment period and at the first Partnership meeting, MSHA received requests from stakeholders to reopen the rulemaking record for comment on the RFI and allow the comment period to remain open during the Partnership proceedings. In response to those requests, MSHA reopened the record for comment and extended the comment period for one year, until January 9, 2018 (82 FR 2284).

However, since the close of the RFI rulemaking record, MSHA received additional stakeholder requests to reopen the record and further extend the comment period on the RFI during the Partnership proceedings. In response, MSHA is reopening the record and extending the comment period to March 26, 2019. The reopening of the rulemaking record for public comments will allow all interested parties an additional opportunity to re-evaluate all issues related to miners' exposure to diesel exhaust and to determine if improvements can be made.

David G. Zatezalo,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2018–05978 Filed 3–23–18; 8:45 am]

BILLING CODE 4520–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0117; FRL–9975–53-Region 1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) submissions from Maine regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2008 lead (Pb), 2008 ozone, and 2010 nitrogen dioxide (NO_2) National Ambient Air Quality Standards (NAAQS). EPA is also proposing to conditionally approve one element of Maine's infrastructure SIP. Finally, EPA is proposing to approve several statutes submitted by Maine in support of its demonstrations that the infrastructure requirements of the CAA have been met. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before April 25, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2017–0117 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 either electronically in *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, Region 1, Air Programs Branch, 5 Post Office Square, Boston, Massachusetts. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

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

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

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

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these SIP submissions?

A. Which Maine SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the Maine Department of Environmental Protection (ME DEP). The state submitted its infrastructure SIP for each NAAQS on the following dates: 2008 Pb—August 21, 2012; 2008 ozone—June 7, 2013; and 2010 NO_2—June 7, 2013. Also, on April 23, 2013, Maine DEP submitted a SIP revision to incorporate conflict of interest state law provisions into the SIP from 38 Maine Revised Statutes Annotated (MRSA) Section 341–C(7) and 5 MRSA Section 18. The April 23, 2013 SIP revision addresses element E(ii) requirements. Furthermore, on February 14, 2013, Maine submitted a SIP revision addressing amendments to certain provisions of 06–096 Code of Maine Regulations (CMR) Chapters 100 and 115. The February 14, 2013 SIP revision both defines $PM_{2.5}$ and incorporates $PM_{2.5}$ into the Prevention of Significant Deterioration (PSD) permitting program. This submission was supplemented on May 31, 2016. EPA approved these SIP revisions on August 1, 2016 (81 FR 50353) and June 24, 2014 (79 FR 35695). These revisions address element A, as well as elements C, D(i)(II), and (J) as they relate to PSD. Finally, on March 1, 2018, Maine submitted a letter providing information and clarification in support of its infrastructure SIP submittals.

B. Why did the state make these SIP submissions?

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

EPA highlighted this statutory requirement in an October 2, 2007 guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ 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)'' (2009 Memo), followed by the October 14, 2011, ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (2011 Memo). Most recently, EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' on September 13, 2013 (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of sections 110(a)(1) and (2) and address the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from Maine that address the infrastructure requirements of CAA sections 110(a)(1) and (2) for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

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

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

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

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

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

EPA is soliciting comment on our evaluation of Maine's infrastructure SIP submissions in this notice of proposed rulemaking. In each of Maine's submissions, a detailed list of Maine Laws and, previously SIP-approved Air Quality Regulations, show precisely how the various components of Maine's EPA-approved SIP meet each of the requirements of section 110(a)(2) of the CAA for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS, as applicable. The following review evaluates the state's submissions in light of section 110(a)(2) requirements and relevant EPA guidance.

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

This section (also referred to in this action as an element) of the Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[1] 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 submittals for this element cite Maine laws and regulations that include enforceable emissions 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 38 MRSA Chapter 4, ''Protection and Improvement of Air.'' Legislative authority giving DEP general authority to promulgate Regulations is codified at 38 MRSA Chapter 2, Subchapter 1: ''Organization and Powers.'' [2] Statutory 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 submittals cite more than two dozen specific rules that the state has adopted to control the emissions of Pb, volatile organic compounds [3] (VOCs), and NO_X. A few, with their EPA approval citation are listed here: 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 06–096 CMR Chapter 130, ''Solvent Cleaners'' (70 FR 30367, May 26, 2005); Chapter 152, ''Control of Emissions of Volatile Organic Compounds from Consumer Products'' (77 FR 30216, May 22, 2012). The Maine regulations listed above were previously approved into the Maine SIP by EPA. *See* 40 CFR 52.1020. Furthermore, on August 21, 2012, Maine submitted a SIP revision containing Maine's updated Chapter 110, ''Ambient Air Quality Standards.'' The updates to Maine's regulation relevant to today's action include updating Maine's ambient air quality standards to be consistent with the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. EPA approved this SIP revision on June 24, 2014 (79 FR 35695).

Based upon EPA's review of Maine's infrastructure SIP submittals and Maine's updated Chapter 110 SIP submittal, EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 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 include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. Each year, states submit annual air monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

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 Pb, ozone, and NO_2 on August 23, 2017.[4] Furthermore, ME DEP populates AQS with air quality monitoring data in a timely manner, and provides EPA with

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

[2] 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.

[3] VOCs and NOx contribute to the formation of ground-level ozone. NOx contribute to the formation of NO_2.

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

prior notification when considering a change to its monitoring network or plan. EPA proposes that ME DEP has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements. The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) Enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications.

Sub-Element 1: Enforcement of SIP Measures

Maine's authority for enforcing SIP measures is established in 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,'' and includes 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 Pb, $PM_{2.5}$, VOC and NO_X. EPA proposes that Maine has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

Prevention of significant deterioration (PSD) applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS. 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 was codified in 40 CFR 51.166, and requires that states submit SIP revisions incorporating the requirements of the rule, including provisions that would treat 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, we propose to approve Maine's infrastructure SIP submittals for the 2008 Pb, 2008 ozone, and 2010 NO_2 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.[5]

On August 1, 2016, EPA approved revisions to Maine's PSD program at 81 FR 50353 that identify SO_2 and NO_X as precursors to $PM_{2.5}$ and revise the state's

[5] EPA notes that on January 4, 2013, the U.S. Court of Appeals for the DC Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (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 revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

regulatory definition of ''significant'' for $PM_{2.5}$ to mean 10 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. *See* 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 submittals for the 2008 Pb, 2008 ozone, and 2010 NO_2 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, EPA approved revisions to the Maine SIP that address EPA's 2010 NSR rule. *See* 81 FR 50353. 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 submittals for the 2008 Pb, 2008 ozone, and 2010 NO_2 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 DC 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 DC Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.''

On August 19, 2015, EPA amended its PSD and title V regulations to remove from the Code of Federal Regulations portions of those regulations that the DC Circuit specifically identified as vacated. EPA intends to further revise the PSD and title V regulations to fully implement the Supreme Court and DC 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 DC Circuit judgment do not prevent EPA's approval of Maine's infrastructure SIP as to the requirements of Elements (C), (as well as sub-elements (D)(i)(II), and (J)(iii)).

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

In summary, we are proposing to approve Maine's submittals for this sub-element with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 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 2008 Pb, 2008 ozone, and 2010 NO_2 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 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

This section contains a comprehensive set of air quality management elements pertaining to the transport of air pollution with which states must comply. It covers the following five topics, categorized as sub-elements: Sub-element 1, Contribute to nonattainment, and interference with maintenance of a NAAQS; Sub-element 2, PSD; Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 above are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into the 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) addresses any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in another state. The EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance).

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

Maine's infrastructure SIP submission for the 2008 Pb NAAQS states that Maine has no Pb sources that exceed, or even approach, 0.5 ton/year. No single source of Pb, or group of sources, anywhere within the state emits enough Pb to cause ambient concentrations to approach the Pb NAAQS. Our review of the Pb emissions data from Maine sources, which the state has entered into the EPA National Emissions Inventory (NEI) database, confirms this, and therefore, EPA agrees with Maine and proposes that Maine has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

Maine's June 7, 2013 infrastructure SIP submission for the 2010 NO_2 NAAQS does not address section 110(a)(2)(D)(i)(I). Therefore, EPA is not taking any action with respect to this sub-element for the NO_2 NAAQS for Maine at this time. Maine's June 7, 2013 infrastructure SIP submission for the 2008 ozone NAAQS likewise does not address section 110(a)(2)(D)(i)(I). However, Maine subsequently submitted a SIP revision on October 26, 2015, addressing this sub-element and EPA approved this SIP revision on October 13, 2016 (81 FR 70631).

Therefore, EPA proposes to approve Maine's submittal for the 2008 Pb NAAQS for sub-element 1 of section 110(a)(2)(D)(i)(I).

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

One aspect of section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to be in any other state's SIP under Part C of the Act to prevent significant deterioration of air quality. One way for a state to meet this requirement, specifically with respect to those 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 requirements of Prong 3, Maine cites to Maine's 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 Pb, NO_X, and VOC 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 SIPs for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS related to section 110(a)(2)(D)(i)(II) for the reasons discussed under Element C.

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

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A

and 169B). The 2009 Memo, the 2011 Memo, and 2013 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze. A fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility. Maine's Regional Haze SIP was approved by EPA 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 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

One aspect of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 relating to interstate pollution abatement. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

EPA-approved 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.'' *See* 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 particular NAAQS at issue. Consequently, EPA proposes to approve Maine's infrastructure SIP submittals for this sub-element with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

One portion of section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 115 relating to international pollution abatement. There are no final findings under section 115 against Maine with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. Therefore, EPA is proposing that Maine has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP and related issues. Additionally, Section 110(a)(2)(E)(ii) requires each state to comply with the requirements with respect to state boards under section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring adequate implementation of SIP obligations with respect to relevant NAAQS. This 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 submittals, has documented that its air agency has the requisite 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 ME DEP with the legal authority to enforce air pollution control requirements and carry out SIP obligations with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. Additionally, state law provides the ME 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. Chapter 8 of the 1972 ME SIP describes the resources and manpower estimates for ME DEP. Finally, Maine states, in its June 7, 2013 submittal for 2008 ozone, that for FY 2012, the Bureau of Air Quality had a staff of 59, and a budget of $5.7 million. EPA proposes that Maine has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (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 Guidance at 42, 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, however, 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 these infrastructure SIPs. Consequently, EPA proposes to conditionally approve Maine's submittals for this requirement of CAA § 128(a)(1).

With respect to the requirements in § 128(a)(2) (regarding potential conflicts of interest), on April 23, 2013, Maine submitted 5 MRSA § 18 and 38 MRSA § 341–C(7) to EPA and requested that they be incorporated into the Maine SIP. Pursuant to 5 MRSA § 18(2), ''[a]n executive employee commits a civil violation if he personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest: A. Himself, his spouse or his dependent children; B. His partners; C. A person or organization with whom he is negotiating or has agreed to an arrangement concerning prospective employment; D. An organization in which he has a direct and substantial financial interest; or E. Any person with whom the executive employee has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, chapter 22–A, during the preceding year.'' Section 18 defines ''executive employee'' to include, among others, ''members of the state boards.'' *Id.* § 18(1). Moreover, 38 MRSA § 341–C(7) specifically provides that the state's conflict of interest provisions at 5 MRSA § 18 apply to Board members. Section 18 further provides that ''[e]very executive employee shall endeavor to avoid the appearance of a conflict of interest by disclosure or by abstention'' and that, for purposes of this requirement, the term '''conflict of interest' includes receiving remuneration, other than reimbursement for reasonable travel expenses, for performing functions that a reasonable person would expect to perform as part of that person's official responsibility as'' a Board member. *Id.* § 18(7). EPA proposes that 5 MRSA § 18 and 38 MRSA § 341–C(7) satisfy the conflict of interest requirements of CAA § 128(a)(2) with respect to members of a board that approves permits or enforcement orders and proposes to incorporate them into the Maine SIP.

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.'' (emphasis added). 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 potential conflict of interest requirements of CAA § 128(a)(2) to be applicable in Maine to *both* Board members *and* the DEP Commissioner. Pursuant to 38 MRSA § 341–A(3)(D), however, the Commissioner of DEP ''is subject to the conflict-of-interest provisions of'' 5 MRSA § 18, thus satisfying this requirement. Because Maine has not yet submitted 38 MRSA § 341–A(3)(D) for inclusion in the SIP, but by letter dated March 1, 2018, has committed to doing so within one year of EPA's final action on Maine's infrastructure SIP submissions, EPA proposes to conditionally approve Maine's submissions for the conflict of interest requirement with respect to the DEP Commissioner.

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

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

Maine's infrastructure submittals reference several existing state regulations previously approved by EPA that require sources to monitor emissions and submit reports. The first is 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. Maine also references EPA-approved 06–096 CMR Chapter 137, ''Emission Statements,'' which requires sources to monitor and report annually to DEP emissions of criteria pollutants and other emissions-related information under certain circumstances. EPA most recently approved Chapter 137 into the SIP on May 1, 2017. *See* 82 FR 20257.

In addition, Maine refers to its regulations implementing its operating permit program pursuant to 40 CFR part 70: 06–096 CMR Chapter 140, ''Part 70 Air Emission License Regulations.'' This regulation, although not in the SIP, identifies the sources of air emissions that require a Part 70 air emission license and incorporates 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. This regulation 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). Finally, Maine references 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. 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 August 21, 2012, 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 reports required under 117 and 137 are ''available to the public . . . pursuant to Maine law.'' We also note that the Maine Freedom of Access Law does not expressly make emissions statements confidential, 1 MRSA § 402, and that, pursuant to DEP's EPA-approved regulations, ''[i]nformation concerning the nature and extent of the emissions of any air contaminant by a source''—which includes emission reports—''shall not be confidential.'' *See* 06–096 CMR Chapter 115, § IX(B)(1). By letter dated March 1, 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, 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 is proposing to approve Maine's submittals for this requirement of section 110(a)(2)(F) for the 2008 ozone, 2008 Pb, and 2010 NO_2 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's submittals and a March 1, 2018 DEP letter 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 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 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 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, by letter dated March 1, 2018, Maine 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 NO_2, Pb,

ozone, or ozone 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 submittals cite 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 Maine's submittals and 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 that, for any NAAQS, Maine have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. *See* 40 CFR 51.152(c). A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. *Id.* All AQCRs in Maine are classified as Priority III areas for NO_2 and ozone, pursuant to 40 CFR 52.1021. Consequently, as relevant to this proposed rulemaking action, Maine's SIP does not need to contain an emergency contingency plan meeting the specific requirements of 51.152 with respect to NO_2 and ozone. Moreover, we note that Pb is not explicitly included in the contingency plan requirements of 40 CFR subpart H. In any event, as discussed earlier in this document with respect to Element D(i)(I), according to EPA's 2014 NEI, there are no Pb sources within Maine that exceed, or even approach, EPA's reporting threshold of 0.5 tons per year. Although not expected, if Pb conditions were to change, Maine DEP does have general authority, as noted previously, to order a source to immediately take such actions as are necessary to reduce or alleviate a danger to public health or safety or to the environment.

EPA proposes that Maine has met the applicable infrastructure SIP requirements for section 110(a)(2)(G) with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

This section requires that a state's SIP provide for revision from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate. To address this requirement, Maine's infrastructure submittals reference 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 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, 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 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.

EPA proposes that Maine has met the infrastructure SIP requirements of CAA section 110(a)(2)(H) with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 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 submissions from Maine with respect to the requirements of CAA section 110(a)(2)(J) are described below.

Sub-Element 1: Consultation With Government Officials

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

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, the 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; and also 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 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

Sub-Element 2: Public Notification

Section 110(a)(2)(J) also requires states to: Notify the public if NAAQS are exceeded in an area; 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 DEP ''educate the public on natural resource use, requirements and issues. *Id.* § 341–A(1). To that end, the ME 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. The ME 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. DEP states in its submittals that, in the event that a Pb monitor is established in Maine in the future, the Department will also put the data collected from such a monitor on its website. 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 ME 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 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

Sub-Element 3: PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Maine's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and, as we have noted, fully satisfies the requirements of EPA's PSD implementation rules. Consequently, we are proposing to approve the PSD sub-element of section 110(a)(2)(J) for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS, consistent with the actions we are proposing for sections 110(a)(2)(C) and 110(a)(2)(D)(i)(II).

Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 Memo, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

To satisfy Element K, the state air agency must demonstrate that it has the authority to perform air quality modeling to predict effects on air quality of emissions of any NAAQS pollutant and submission of such data to EPA upon request. Maine state law implicitly authorizes DEP to perform air quality monitoring 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 Chapter 115, which requires an applicant to provide a demonstration, that may include air-quality modeling, that shows its emissions will not violate the NAAQS. We note that EPA-approved Chapter 115 requires DEP to notify EPA of any PSD application, *see* § IX(E), and that EPA-approved 06–096 CMR Chapter 1 requires DEP to make ''[a]ll applications or other forms and documents submitted in support of any license application'' publicly available. *See* § 6(A)(1), which naturally includes EPA. In its August 21, 2012 submittal, DEP further states that it performs modeling, provides modeling data to EPA upon request, and will continue to do both. Maine also cites to 06–096 Chapter 116, ''Prohibited Dispersion Techniques,'' which includes regulations applicable to the State's air quality modeling consistent with federal requirements concerning stack height and other dispersion techniques, such as merging of plumes. These regulations also define the area surrounding the source where ambient air quality standards do not have to be met. Finally, Maine cites 06–096 CMR Chapter 140, which contains air quality modeling requirements for sources subject to 40 CFR part 70 that are analogous to those in Chapter 115. Maine also collaborates with the Ozone Transport Commission (OTC) and the Mid-Atlantic Regional Air Management Association and EPA in order to perform large-scale urban air shed modeling for ozone if necessary.

EPA proposes that Maine has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit. Maine implements and operates a Title V permit program. S*ee* 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 (Sept. 19, 1996). Maine also notes in its submittals that the costs of all CAA permitting, implementation, and enforcement for new or modified sources are covered by Title V fees and that 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 has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

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

To satisfy Element M, states must consult with, and allow participation from, local political subdivisions affected by the SIP. Maine's infrastructure submittals reference the Maine Administrative Procedure Act, 5 MRSA Chapter 375, and explain 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 has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS.

N. Maine Statute and Executive Order Submitted for Incorporation Into the SIP

As noted above, in the discussion of element E, on April 23, 2013, Maine submitted, and EPA is proposing to approve 38 MRSA § 341–C(7), ''Conflict of Interest,'' and 5 MRSA § 18, ''Disqualification of executive employees from participation in certain matters,'' into the SIP.

V. What action is EPA taking?

EPA is proposing to approve the infrastructure SIPs submitted by Maine for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. The state submitted its infrastructure SIP for each NAAQS on the following dates: 2008 Pb—August 21 2012; 2008 ozone—June 7, 2013; and 2010 NO_2—June 7, 2013. Also, we are proposing to approve into the SIP, Maine's conflict of interest provisions found in 38 MRSA Section 341–C(7) and 5 MRSA Section 18, which DEP submitted as a SIP revision on April 23, 2013. Specifically, EPA's proposed actions regarding each infrastructure SIP requirement are contained in Table 1 below.

TABLE 1—PROPOSED ACTION ON MAINE'S INFRASTRUCTURE SIP SUBMITTALS

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

In the above table, the key is as follows:

A	Approve.
CA ...	Conditionally Approve.
NA ...	Not applicable.
NG ..	Not germane to infrastructure SIPs.
NS ...	No Submittal.
PA ...	Previously approved (see 81 FR 70631, Oct. 13, 2016).

As noted in Table 1, we are proposing to conditionally approve portions of Maine's infrastructure SIP submittals pertaining to the state's Board for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS. Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to submit an update to its State Board rules that fully remedies the deficiencies 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 new submittal. If EPA disapproves the new submittal, the conditionally approved infrastructure SIP elements for all affected pollutants will be disapproved. In addition, a final disapproval triggers the Federal Implementation Plan requirement under section 110(c). If EPA approves the new submittal, the State Board rule and relevant infrastructure SIP elements will be fully approved and replace the conditionally approved program in the SIP.

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

VI. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the two Maine statutes listed in Section V above. EPA has made, and will continue to make, these documents generally available electronically through *https://www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: March 15, 2018.

Alexandra Dapolito Dunn,

Regional Administrator, EPA Region 1.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[EPA–R01–OAR–2017–0641; FRL–9975–51–Region 1]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Asbestos Management and Control; State of New Hampshire Department of Environmental Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant the New Hampshire Department of Environmental Services (NH DES) the authority to implement and enforce the amended Asbestos Management and Control Rule in place of the National Emission Standard for Asbestos (Asbestos NESHAP) as it applies to certain asbestos-related activities. Upon approval, NH DES's amended rule would apply to all sources that otherwise would be regulated by the Asbestos NESHAP with the exception of inactive waste disposal sites that ceased operation on or before July 9, 1981. These inactive disposal sites are already regulated by State rules that were approved by EPA on January 11, 2013. This proposed approval would make NH DES's amended Asbestos