

The bridge owner, Connecticut Department of Transportation, requested a temporary deviation from the normal operating schedule to perform timber ties replacement and steel repairs at the bridge.

Under this temporary deviation, the Metro-North Devon Bridge will operate according to the schedule below:

a. From 8 a.m. on September 6, 2016 through 4 a.m. on September 9, 2016, the bridge will not open to marine traffic.

b. From 4 a.m. on September 9, 2016 through 8 a.m. on September 12, 2016, the bridge will open fully on signal upon 24 hr advance notice.

c. From 8 a.m. on September 12, 2016 through 4 a.m. on September 16, 2016, the bridge will not open to marine traffic.

d. From 4 a.m. on September 16, 2016 through 8 a.m. on September 19, 2016, the bridge will open fully on signal upon 24 hr advance notice.

Vessels able to pass under the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass.

The Coast Guard will inform the users of the waterways through our Local Notice and Broadcast to Mariners of the change in operating schedule for the bridge so that vessel operations can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 5, 2016.

**C.J. Bisignano,**

*Supervisory Bridge Management Specialist,  
First Coast Guard District.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2012-0950; FRL-9948-58-Region 1]

### Air Plan Approval; New Hampshire; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) submissions from New Hampshire regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 sulfur dioxide National Ambient Air Quality Standards (NAAQS). EPA is also updating the classification for two of New Hampshire's air quality control regions for sulfur dioxide based on recent air quality monitoring data collected by the state. Last, we are conditionally approving certain elements of New Hampshire's submittal relating to prevention of significant deterioration requirements.

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:** This final rule is effective on August 8, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R01-OAR-2012-0950. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, 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 at <http://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Donald Dahl, (617) 918-1657, or by email at [dahl.donald@epa.gov](mailto:dahl.donald@epa.gov).

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

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

- I. Summary of SIP Revision
- II. Public Comments

A. Sierra Club General Comments on Emission Limitations

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2. The Legislative History of the CAA
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4. EPA Regulations, Such as 40 CFR 51.112(a)
5. EPA Interpretations in Other Rulemakings

B. Sierra Club Comments on New Hampshire SIP SO<sub>2</sub> Emission Limits

III. Final Action

IV. Statutory and Executive Order Reviews

### I. Summary of SIP Revision

On June 22, 2010 (75 FR 35520), EPA promulgated a revised NAAQS for the 1-hour primary SO<sub>2</sub> at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe.

On September 13, 2013, the New Hampshire Department of Environmental Services (NH DES) submitted a SIP revision addressing infrastructure elements specified in section 110(a)(2) of the CAA to implement, maintain, and enforce the 2010 sulfur dioxide NAAQS. On July 17, 2015 (80 FR 42446), EPA published a notice of proposed rulemaking (NPR) for the State of New Hampshire proposing approval of New Hampshire's submittal. In the NPR, EPA proposed approval of the following infrastructure elements: Section 110(a)(2)(A), (B), (C) (enforcement and minor new source review), (D)(i)(II) (Visibility Protection), (D)(ii) (International Pollution Abatement), (E)(i) and (ii), (F), (G), (H), (J) (consultation, public notification, and visibility protection), (K), (L), and (M), or portions thereof. EPA also proposed to approve the PSD program relating to infrastructure elements (C)(ii), D(i)(II), D(ii), and (J)(iii), except to conditionally approve the aspect of the PSD program relating to notification to neighboring states. Within the same NPR, EPA also proposed taking similar action on New Hampshire's infrastructure SIP submittals for the 2008 lead, 2008 ozone, and the 2010 nitrogen dioxide standards. EPA has already finalized its action on the infrastructure SIPs for the 2008 lead, 2008 ozone, and the 2010 nitrogen dioxide standards (80 FR 78139, December 16, 2015).

In New Hampshire's September 13, 2013 infrastructure SIP for the SO<sub>2</sub> NAAQS, the state did not submit section 110(a)(2)(I) which pertains to the

nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process. This rulemaking action also does not include action on section 110(a)(2)(D)(i)(I) of the CAA, because New Hampshire's September 13, 2013 infrastructure SIP submittal did not include provisions for this element. EPA will take later, separate action on section 110(a)(2)(D)(i)(I) for the 2010 SO<sub>2</sub> NAAQS for New Hampshire.

The rationale supporting EPA's proposed rulemaking action, including the scope of infrastructure SIPs in general, is explained in the published NPR. The NPR is available in the docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R01-OAR-2012-0950.

## II. Public Comments and EPA's Responses

EPA received comments from the Sierra Club on the August 17, 2015 proposed rulemaking action on New Hampshire's 2010 SO<sub>2</sub> infrastructure SIP. A full set of these comments is provided in the docket for this final rulemaking action.

### A. Sierra Club General Comments on Emission Limitations

#### 1. The Plain Language of the CAA

*Comment 1:* Sierra Club (hereafter referred to as Commenter) contends that the plain language of section 110(a)(2)(A) of the CAA, legislative history of the CAA, case law, EPA regulations such as 40 CFR 51.112(a), and EPA interpretations in prior rulemakings require that infrastructure SIPs include enforceable emission limits that ensure attainment and maintenance of the NAAQS. Accordingly, Commenter contends that any infrastructure SIP where emission limits are inadequate to prevent exceedances of the NAAQS must be disapproved.

The Commenter states the main objective of the infrastructure SIP process "is to ensure that all areas of the country meet the NAAQS" and states that nonattainment areas are addressed through "nonattainment SIPs." The Commenter asserts the NAAQS "are the foundation upon which air emissions limitations and standards for the entire country are set," including specific emission limitations for most large stationary sources, such as coal-fired power plants. The Commenter discusses the CAA's framework whereby states have primary responsibility to assure air quality within the state, which the states

carry out through SIPs such as infrastructure SIPs required by section 110(a)(2). The Commenter also states that on its face the CAA requires infrastructure SIPs "to prevent exceedances of the NAAQS." In support, the Commenter quotes the language in section 110(a)(1), which requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS, and the language in section 110(a)(2)(A), which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA, which the Commenter claims includes attainment and maintenance of the NAAQS. The Commenter also notes the use of the word "attain" in section 110(a)(2)(H)(ii) and suggests this is further evidence that the emission limits provided for in section 110(a)(2)(A) must ensure attainment of the NAAQS.

*Response 1:* EPA disagrees that section 110 is clear on its face and must be interpreted in the manner suggested by the Commenter. As we have previously explained in response to the Commenter's similar comments on EPA's actions approving other states' infrastructure SIPs, section 110 is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure.<sup>1</sup>

EPA interprets infrastructure SIPs as more general planning SIPs, consistent with the CAA as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in "air quality control regions" (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with a new NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for

"attainment" of the NAAQS and section 110(a)(2)(B) specified that the plan must include "emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS]."

In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of a state were violating the NAAQS (*i.e.*, were nonattainment) or were meeting the NAAQS (*i.e.*, were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause "as may be necessary to insure attainment and maintenance [of the NAAQS]" with "as may be necessary or appropriate to meet the applicable requirements of this chapter."<sup>2</sup> Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 of the CAA did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. More detailed, later-enacted

<sup>2</sup> The Commenter misses the mark by citing the word "attain" in CAA section 110(a)(2)(H) as evidence that the emission limits submitted to satisfy the infrastructure requirements of 110(a)(2)(A) must ensure attainment of the NAAQS. That portion of section 110(a)(2)(H) is referencing CAA section 110(k)(5)—the "SIP call" process—which allows the Administrator to make a finding of substantial inadequacy with respect to a SIP. As discussed at proposal, the existence of section 110(k)(5) bolsters the reasonableness of EPA's approach to infrastructure SIP requirements, which is based on a reasonable reading of sections 110(a)(1) and 110(a)(2). Section 110(k)(5) is one of the avenues and mechanisms Congress provided to address specific substantive deficiencies in existing SIPs. The SIP call process allows EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(a)(2)(H)(ii) ensures that the relevant state agency has the authority to revise the SIP in response to a SIP call.

<sup>1</sup> See 80 FR 46494 (Aug. 5, 2015) (approving Pennsylvania SO<sub>2</sub> and ozone infrastructure SIP); 80 FR 11557 (Mar. 4, 2015) (approving Virginia SO<sub>2</sub> infrastructure SIP); 79 FR 62022 (Oct. 16, 2014) (approving West Virginia SO<sub>2</sub> infrastructure SIP); 79 FR 19001 (Apr. 7, 2014) (approving West Virginia ozone infrastructure SIP); 79 FR 17043 (Mar. 27, 2014) (approving Virginia ozone infrastructure SIP); and 80 FR 63436 (Oct. 20, 2015) (approving Minnesota ozone, NO<sub>2</sub>, SO<sub>2</sub>, and PM<sub>2.5</sub> infrastructure SIP).

provisions govern the substantive planning process, including planning for attainment of the NAAQS.

Thus, section 110 of the CAA is only one provision of the complicated overall structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and must be interpreted in the context of that structure and the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) of the CAA that the plan provide for “implementation, maintenance and enforcement” to mean that the SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. EPA has interpreted the requirement for emission limitations in section 110 to mean that a state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Finally, as EPA has stated in the 2013 Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (“2013 Infrastructure SIP Guidance”), which specifically provides guidance to states in addressing the 2010 SO<sub>2</sub> NAAQS, “[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency’s SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.” 2013 Infrastructure SIP Guidance at p. 1–2.<sup>3</sup>

## 2. The Legislative History of the CAA

*Comment 2:* The Commenter cites two excerpts from the legislative history of the 1970 CAA, claiming they support an interpretation that SIP revisions under CAA section 110 must include emissions limitations sufficient to show

<sup>3</sup> Thus, EPA disagrees with the Commenter’s general assertion that the main objective of infrastructure SIPs is to ensure all areas of the country meet the NAAQS, as we believe the infrastructure SIP process is the opportunity to review the structural requirements of a state’s air program. While the NAAQS can be a foundation upon which emission limitations are set, as explained in responses to subsequent comments, these emission limitations are generally set in the attainment planning process envisioned by part D of title I of the CAA, including, but not limited to, CAA sections 172, 181–182, and 191–192.

maintenance of the NAAQS in all areas of the state. The Commenter also contends that the legislative history of the CAA supports the interpretation that infrastructure SIPs under section 110(a)(2) must include enforceable emission limitations, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

*Response 2:* As provided in the previous response, the CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning demonstrating attainment. *See also* 79 FR at 17046 (responding to comments on Virginia’s ozone infrastructure SIP). In any event, the two excerpts of legislative history the Commenter cites merely provide that states should include enforceable emission limits in their SIPs, and they do not mention or otherwise address whether states are required to include maintenance plans for all areas of the state as part of the infrastructure SIP.

## 3. Case Law

*Comment 3:* The Commenter also discusses several cases applying the CAA which the Commenter claims support its contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIPs to prevent exceedances of the NAAQS. The Commenter first cites to language in *Train v. Natural Resources Defense Council*, 421 U.S. 60, 78 (1975), addressing the requirement for “emission limitations” and stating that emission limitations “are the specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meets the national standards.” The Commenter also cites *Pennsylvania Department of Environmental Resources v. EPA*, 932 F.2d 269, 272 (3d Cir. 1991), for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS, and to *Mision Industrial, Inc. v. EPA*, 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The Commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Department of Environmental Conservation v. EPA*, 540 U.S. 461, 470 (2004), which in turn quoted section 110(a)(2)(A) of the CAA and also stated that “SIPs must include certain measures Congress specified” to ensure attainment of the NAAQS. The

Commenter also quotes several additional opinions in this vein, including *Montana Sulphur & Chemical Co. v. EPA*, 666 F.3d 1174, 1180 (9th Cir. 2012) (“The Clean Air Act directs states to develop implementation plans—SIPs—that ‘assure’ attainment and maintenance of national ambient air quality standards (‘NAAQS’) through enforceable emission limitations.”) and *Hall v. EPA*, 273 F.3d 1146, 1161 (9th Cir. 2001) (EPA’s analysis is required to “reflect consideration of the prospects of meeting current attainment requirements under a revised air quality plan.”). Finally, the Commenter cites *Michigan Department of Environmental Quality v. Browner*, for the proposition that an infrastructure SIP must “include[] emission limitations that result in compliance with the NAAQS.” 230 F.3d 181, 185 (6th Cir. 2000) (citing *Train*, 421 U.S. at 79).

*Response 3:* None of the cases the Commenter cites support its contention that section 110(a)(2)(A) is clear that infrastructure SIPs must include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state, nor do they shed light on how section 110(a)(2)(A) may reasonably be interpreted. With the exception of *Train*, none of the cases the Commenter cites concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, the courts reference section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background sections of decisions in the context of a challenge to an EPA action on revisions to a SIP that was required and approved or disapproved as meeting other provisions of the CAA or in the context of an enforcement action.

In *Train*, the Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were “postponements” that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The Court concluded that EPA reasonably interpreted section 110(f) not to restrict a state’s choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus, the issue was not whether a section 110 SIP

needs to provide for attainment or whether emissions limits providing such are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Department of Environmental Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The Court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the Court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision* was the definition of "emissions limitation," not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the Commenter quotes does not interpret but rather merely describes section 110(a)(2)(A); the decision in this case has no bearing here.<sup>4</sup> In *Montana Sulphur*, the Court was not reviewing an infrastructure SIP, but rather EPA's disapproval of a SIP and promulgation of a federal implementation plan (FIP) after a long history of the state failing to submit an adequate SIP in response to EPA's finding under section 110(k)(5) that the previously approved SIP was substantially inadequate to attain or maintain the NAAQS. The Court cited generally to sections 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations, but this

language was not part of the Court's holding in the case, which focused instead on whether EPA's finding of SIP inadequacy, disapproval of the state's required responsive attainment demonstration under section 110(k)(5), and adoption of a remedial FIP under section 110(c) were lawful. The Commenter suggests that *Alaska Department of Environmental Conservation* stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the Court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the Court made no mention of the changed language. Furthermore, the Commenter also quotes the Court's statement that "SIPs must include certain measures Congress specified," but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's "new source" permitting program, not its infrastructure SIP.

Two of the other cases the Commenter cites, *Michigan Department of Environmental Quality and Hall*, interpret CAA section 110(I), the provision governing "revisions" to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the courts cited to section 110(a)(2)(A) solely for the purpose of providing a brief background of the CAA.

EPA does not believe any of these court decisions addressed required measures for infrastructure SIPs and believes nothing in the opinions addressed whether infrastructure SIPs need to contain measures to ensure attainment and maintenance of the NAAQS.

#### 4. EPA Regulations, Such as 40 CFR 51.112(a)

*Comment 4:* The Commenter cites to 40 CFR 51.112(a), providing that each plan "must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS]." The Commenter asserts that this regulation requires infrastructure SIPs to include emissions limits necessary to ensure attainment and maintenance of the NAAQS. The Commenter states the provisions of 40 CFR 51.112 are not limited to nonattainment SIPs and

instead apply to infrastructure SIPs, which are required to attain and maintain the NAAQS in all areas of a state. The Commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that "[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act . . ." 51 FR 40656, 40656 (Nov. 7, 1986). The Commenter asserts 40 CFR 51.112(a) "identifies the plans to which it applies as those that *implement* the NAAQS," which it contends means that § 51.112(a) is applicable to infrastructure SIPs.

*Response 4:* The Commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits adequate to ensure attainment and maintenance of the NAAQS is not supported. As an initial matter, EPA notes this regulatory provision was initially promulgated and later restructured and consolidated prior to the CAA Amendments of 1990, in which Congress removed all references to "attainment" in section 110(a)(2)(A). And, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing "control strategy" SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as sections 175A, 181–182, and 191–192. The Commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's action "restructuring and consolidating" provisions in part 51, EPA stated the new attainment demonstration provisions in the 1977 Amendments to the CAA were "beyond the scope" of the rulemaking. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather was meant merely to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new "Part D" attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. 51 FR at 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new "Part D" of the CAA, it is clear the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was

<sup>4</sup> To the extent the comments could be read to include an assertion that New Hampshire's SIP does not contain any "emissions limitations" relevant to SO<sub>2</sub>, it should be noted that state regulations at Env-A Chapter 400, Sulfur Content Limits in Fuels, which EPA previously approved into the state's SIP, see 40 CFR 52.1520(c), are similar to the regulations that the *Mision* court found to be an "emission limitation" in 1976. See 547 F.2d at 129.

replacing 40 CFR 51.13 (“Control strategy: SO<sub>x</sub> and PM (portion)”), 51.14 (“Control strategy: CO, HC, O<sub>x</sub> and NO<sub>2</sub> (portion)”), 51.80 (“Demonstration of attainment: Pb (portion)”), and 51.82 (“Air quality data (portion)”). *Id.* at 40,660. Thus, the present-day 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

#### 5. EPA Interpretations in Other Rulemakings

*Comment 5:* The Commenter references a prior EPA rulemaking action where EPA disapproved a SIP and claims that action shows EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject the SIP. The Commenter points to a 2006 partial approval and partial disapproval of revisions to Missouri’s existing control strategy plans addressing the SO<sub>2</sub> NAAQS. The Commenter claims EPA cited section 110(a)(2)(A) for disapproving a revision to the state plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO<sub>2</sub> NAAQS after revision of an emission limit and claims EPA cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. The Commenter claims the revisions to Missouri’s control strategy SIP for SO<sub>2</sub> were rejected by EPA because the revised control strategy limits were also in Missouri’s infrastructure SIP and thus the weakened limits would have impacted the infrastructure SIP’s ability to aid in attaining and maintaining the NAAQS.

*Response 5:* EPA does not agree the prior Missouri rulemaking action referenced by the Commenter establishes how EPA reviews infrastructure SIPs. It is clear from the final Missouri rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent. EPA’s partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP in 71 FR 12623 addressed a control strategy SIP and not an infrastructure SIP. Nothing in that action addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS.

#### B. Sierra Club Comments on New Hampshire SIP SO<sub>2</sub> Emission Limits

The Commenter contends that the New Hampshire 2010 SO<sub>2</sub> infrastructure

SIP revisions did not revise the existing SO<sub>2</sub> emission limits in response to the 2010 SO<sub>2</sub> NAAQS and fail to comport with assorted CAA requirements for SIPs to establish enforceable emission limits that are adequate to prohibit NAAQS exceedances in areas not designated nonattainment.

*Comment 6:* Citing section 110(a)(2)(A) of the CAA, the Commenter contends that EPA may not approve New Hampshire’s proposed 2010 SO<sub>2</sub> infrastructure SIP, because it does not include SO<sub>2</sub> emissions limits or other required measures sufficient to ensure attainment and maintenance of the SO<sub>2</sub> NAAQS in areas not designated nonattainment, which the Commenter claims is required by section 110(a)(2)(A), and because it does not include SO<sub>2</sub> emission limits “set in light of the 2010 SO<sub>2</sub> NAAQS or even analyzed in light of the standard.” The Commenter also contended that section 110(a)(2)(A) requires not only that the state air agency has the authority to adopt future emission limitations, but that the SIP include existing substantive emission limitations. The Commenter also provided results from a refined air dispersion modeling analysis that evaluated SO<sub>2</sub> impacts from Schiller Station, which the commentor asserts demonstrate that SO<sub>2</sub> emission limits relied on in the infrastructure SIP are insufficient to prevent exceedances of the NAAQS in both New Hampshire and Maine and claims that emissions from this source can in theory, and have in practice, resulted in exceedances of the 2010 SO<sub>2</sub> NAAQS. Lastly, the commentor asserted the structure of the Act makes clear that Congress did not intend states to be relieved of their infrastructure SIP obligations under section 110(a)(2)(A) until designations occur. For all of these reasons, the Commenter maintained that EPA should disapprove New Hampshire’s SO<sub>2</sub> infrastructure SIP and promulgate a FIP.

*Response 6:* EPA disagrees with the Commenter that EPA must disapprove New Hampshire’s SO<sub>2</sub> infrastructure SIP for the reasons provided by the Commenter, including the Commenter’s modeling results and the state’s allegedly insufficient SO<sub>2</sub> emission limits. EPA is not in this action making a determination regarding the State’s current air quality status or regarding whether its control strategy is sufficient to attain and maintain the NAAQS. Therefore, EPA is not in this action making any judgment on whether the Commenter’s submitted modeling demonstrates the NAAQS exceedances that the Commenter claims. EPA believes that section 110(a)(2)(A) of the CAA is reasonably interpreted to require

states to submit infrastructure SIPs that reflect the first step in their planning for attainment and maintenance of a new or revised NAAQS. These SIP revisions should contain a demonstration the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS and show that the SIP has enforceable control measures. In light of the structure of the CAA, EPA’s longstanding position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state. As mentioned above, EPA has interpreted this to mean with regard to the requirement for emission limitations that states may rely on measures already in place to address the pollutant at issue or any new control measures that *the state* may choose to submit. As stated in response to a previous more general comment, section 110 of the CAA is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) of the CAA that the plan provide for “implementation, maintenance and enforcement” to mean that the SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the State demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. As discussed above, EPA has interpreted the requirement for emission limitations in section 110 to mean the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may choose to submit. Finally, as EPA stated in the 2013 Infrastructure SIP Guidance, which specifically provides guidance to states in addressing the 2010 SO<sub>2</sub> NAAQS, “[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency’s SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by

making a substantive SIP revision to update the SIP, or both.” 2013 Infrastructure SIP Guidance at p. 2. On April 12, 2012, EPA explained its expectations regarding implementation of the 2010 SO<sub>2</sub> NAAQS via letters to each of the states. EPA communicated in the April 2012 letters that all states were expected to submit SIPs meeting the “infrastructure” SIP requirements under section 110(a)(2) of the CAA by June 2013. At the time, EPA was undertaking a stakeholder outreach process to continue to develop possible approaches for determining attainment status under the SO<sub>2</sub> NAAQS and implementing this NAAQS. EPA made abundantly clear in the April 2012 letters that EPA did not expect states to submit substantive attainment demonstrations or modeling demonstrations showing attainment for areas not designated nonattainment in infrastructure SIPs due in June 2013. Although EPA had previously suggested in its 2010 SO<sub>2</sub> NAAQS preamble and in prior draft implementation guidance in 2011 that states should, in the unique SO<sub>2</sub> context, use the section 110(a) SIP process as the vehicle for demonstrating attainment of the NAAQS, this approach was never adopted as a binding requirement and was subsequently discarded in the April 2012 letters to states. The April 2012 letters recommended states focus infrastructure SIPs due in June 2013, such as New Hampshire’s SO<sub>2</sub> infrastructure SIP, on traditional “infrastructure elements” in section 110(a)(1) and (2) rather than on modeling demonstrations for future attainment for areas not designated as nonattainment.<sup>5</sup> Therefore, EPA asserts

<sup>5</sup> In EPA’s final SO<sub>2</sub> NAAQS preamble, 75 FR 35520 (June 22, 2010), and subsequent draft guidance in March and September 2011, EPA had expressed its expectation that many areas would be initially designated as unclassifiable due to limitations in the scope of the ambient monitoring network and the short time available before which states could conduct modeling to support their designations recommendations due in June 2011. In order to address concerns about potential violations in these unclassifiable areas, EPA initially recommended that states submit substantive attainment demonstration SIPs based on air quality modeling by June 2013 (under section 110(a)) that show how their unclassifiable areas would attain and maintain the NAAQS in the future. *Implementation of the 2010 Primary 1-Hour SO<sub>2</sub> NAAQS, Draft White Paper for Discussion*, May 2012 (“2012 Draft White Paper”) (for discussion purposes with Stakeholders at meetings in May and June 2012), available at <http://www.epa.gov/airquality/sulfurdioxide/implement.html>. However, EPA clearly stated in this 2012 Draft White Paper its clarified implementation position that it was no longer recommending such attainment demonstrations for unclassifiable areas for June 2013 infrastructure SIPs. *Id.* EPA had stated in the preamble to the NAAQS and in the prior 2011 draft guidance that EPA intended to develop and seek public comment on guidance for modeling and development of SIPs for sections 110 and 191 of the

that evaluations of modeling demonstrations such as the one submitted by the Commenter are more appropriately considered in actions that make determinations regarding states’ current air quality status or regarding future air quality status. EPA also asserts that SIP revisions for SO<sub>2</sub> nonattainment areas, including measures and modeling demonstrating attainment, are due by the dates statutorily prescribed under subpart 5 under part D. Those submissions are due no later than 18 months after an area is designated nonattainment for SO<sub>2</sub> under CAA section 191(a). Thus, the CAA directs states to submit these SIP requirements that are specific for nonattainment areas on a separate schedule from the “structural requirements” of 110(a)(2) which are due within three years of adoption or revision of a NAAQS and which apply statewide. The infrastructure SIP submission requirement does not move up the date for any required submission of a part D plan for areas designated nonattainment for the new NAAQS. Thus, elements relating to demonstrating attainment for areas not attaining the NAAQS are not necessary for infrastructure SIP submissions,<sup>6</sup> and the CAA does not provide explicit requirements for demonstrating attainment for areas that have not yet been designated regarding attainment with a particular NAAQS. As stated previously, EPA believes that the proper inquiry at this juncture is whether New Hampshire has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the infrastructure submittal. Emissions limitations and other control measures needed to attain the NAAQS in areas designated nonattainment for that NAAQS are due on a different schedule from the section 110 infrastructure elements. A state, like New Hampshire, may reference preexisting SIP emission limits or other rules contained in part D

CAA. Section 191 of the CAA requires states to submit SIPs in accordance with section 172 for areas designated nonattainment with the SO<sub>2</sub> NAAQS. After seeking such comment, EPA has now issued guidance for the nonattainment area SIPs due pursuant to sections 191 and 172. *See Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions*, Stephen D. Page, Director, EPA’s Office of Air Quality Planning and Standards, to Regional Air Division Directors Regions 1–10, April 23, 2014. In September 2013, EPA had previously issued specific guidance relevant to infrastructure SIP submissions due for the NAAQS, including the 2010 SO<sub>2</sub> NAAQS. *See* 2013 Infrastructure SIP Guidance.

<sup>6</sup> For this reason, EPA disagrees with the comment that the infrastructure SIP process is the appropriate mechanism in which to demonstrate that emission limitations for Merrimack Station are sufficient to ensure the Central New Hampshire nonattainment area attains the standard.

plans for previous NAAQS in an infrastructure SIP submission. New Hampshire’s existing rules and emission reduction measures in the SIP that control emissions of SO<sub>2</sub> were discussed in the state’s submittal.<sup>7</sup> These provisions have the ability to reduce SO<sub>2</sub> overall. Although the New Hampshire SIP relies on measures and programs used to implement previous SO<sub>2</sub> NAAQS, these provisions are not limited to reducing SO<sub>2</sub> levels to meet one specific NAAQS and will continue to provide benefits for the 2010 SO<sub>2</sub> NAAQS. Additionally, as discussed in the NPR, New Hampshire has the ability to revise its SIP when necessary (e.g. in the event the Administrator finds the plan to be substantially inadequate to attain the NAAQS or otherwise meet all applicable CAA requirements) as required under element H of section 110(a)(2).

The requirements for emission reduction measures for an area designated nonattainment for the 2010 primary SO<sub>2</sub> NAAQS are in sections 172 and 191–192 of the CAA, and therefore, the appropriate avenue for implementing requirements for necessary emission limitations for demonstrating attainment with the 2010 SO<sub>2</sub> NAAQS is through the attainment planning process contemplated by those sections of the CAA. On August 5, 2013, EPA designated as nonattainment most areas in locations where existing monitoring data from 2009–2011 indicated violations of the 1-hour SO<sub>2</sub> standard. 78 FR 47191. At that time, one area in New Hampshire had monitoring data from 2009–2011 indicating violations of the 1-hour SO<sub>2</sub> standard, and this area was designated nonattainment in New Hampshire. *See* 40 CFR 81.330. On March 2, 2015 the United States District Court for the Northern District of California entered a Consent Decree among the EPA, Sierra Club and Natural Resources Defense Council to resolve litigation concerning the deadline for completing designations for the 2010 SO<sub>2</sub> NAAQS. Pursuant to the terms of the Consent Decree, EPA will complete additional designations for all remaining areas of the country including remaining areas in New Hampshire.<sup>8</sup>

<sup>7</sup> New Hampshire cites to several SIP approved emission limitations relevant to SO<sub>2</sub> to demonstrate compliance with section 110(a)(2)(A), including Chapter Env-A 400 (Sulfur Content Limits in Fuels)(renumbered Env-A 1600). Thus, to the extent the Commenter meant to suggest that New Hampshire only has authority to set future emission limitations, but that the SIP contains none relevant to the 2010 SO<sub>2</sub> NAAQS, we disagree.

<sup>8</sup> The Consent Decree, entered March 2, 2015 by the United States District Court for the Northern

For the area designated nonattainment in New Hampshire in August 2013, the attainment SIP was due by April 4, 2015 and must contain a demonstration that the area will attain the 2010 SO<sub>2</sub> NAAQS as expeditiously as practicable, but no later than October 4, 2018 pursuant to sections 172, 191 and 192 of the CAA, including a plan for enforceable measures to reach attainment of the NAAQS. Similar attainment planning SIPs for any additional areas which EPA subsequently designates nonattainment with the 2010 SO<sub>2</sub> NAAQS will be due for such areas within the timeframes specified in CAA section 191. EPA believes it is not appropriate to interpret the overall section 110(a)(2) infrastructure SIP obligation to require bypassing the attainment planning process by imposing separate requirements outside the attainment planning process. Such actions would be disruptive and premature absent exceptional circumstances and would interfere with a state's planning process. *See In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petitions Numbers III–2012–06, III–2012–07, and III 2013–01 (July 30, 2014) (hereafter, *Homer City/Mansfield Order*) at 10–19 (finding Pennsylvania SIP did not require imposition of 1-hour SO<sub>2</sub> emission limits on sources independent of the part D attainment planning process contemplated by the CAA). The history of the CAA and intent of Congress for the CAA as described above demonstrate clearly that it is within the section 172 and general part D attainment planning process that New Hampshire must include SO<sub>2</sub> emission limits on sources, where needed, for the area designated nonattainment to reach attainment with the 2010 1-hour SO<sub>2</sub> NAAQS and for any additional areas EPA may subsequently designate nonattainment. EPA agrees that the structure of the Act makes clear that Congress did not intend to postpone a state's obligation to submit and infrastructure SIP under section 110(a)(2)(A) until designations occur. EPA disagrees, however, with the Commenter's interpretation that section 110(a)(2)(A) requires a state to submit SO<sub>2</sub> emission limitations for individual sources during this infrastructure SIP planning process that ensure attainment and maintenance of the 2010 SO<sub>2</sub> NAAQS. As stated above, in light of the revisions to section 110 since 1970 and

the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) that the plan provide for "implementation, maintenance and enforcement" to mean that the SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the State demonstrate that it has the necessary tools to implement and enforce a NAAQS.

As noted in EPA's preamble for the 2010 SO<sub>2</sub> NAAQS, determining compliance with the SO<sub>2</sub> NAAQS will likely be a source-driven analysis and EPA has explored options to ensure that the SO<sub>2</sub> designations process realistically accounts for anticipated SO<sub>2</sub> reductions at sources that we expect will be achieved by current and pending national and regional rules. *See* 75 FR 35520 (June 22, 2010). As mentioned previously, EPA will act in accordance with the entered Consent Decree's schedule for conducting additional designations for the 2010 SO<sub>2</sub> NAAQS and any areas designated nonattainment must meet the applicable part D requirements for these areas. However, because the purpose of an infrastructure SIP submission is for more general planning purposes, EPA does not believe New Hampshire was obligated during this infrastructure SIP planning process to account for controlled SO<sub>2</sub> levels at individual sources to satisfy section 110(a)(2)(A). *See Homer City/Mansfield Order* at 10–19. Regarding the air dispersion modeling conducted by the Commenter pursuant to AERMOD for Schiller Station, EPA does not find the modeling information relevant at this time for review of an infrastructure SIP. While EPA has extensively discussed the use of modeling for attainment demonstration purposes and for designations, EPA has affirmatively stated such modeling was not needed to demonstrate attainment for the SO<sub>2</sub> infrastructure SIPs under the 2010 SO<sub>2</sub> NAAQS. *See* April 12, 2012 letters to states regarding SO<sub>2</sub> implementation and *Implementation of the 2010 Primary 1-Hour SO<sub>2</sub> NAAQS, Draft White Paper for Discussion*, May 2012, available at <http://www.epa.gov/airquality/sulfurdioxide/implement.html>.<sup>9</sup> EPA's Data Requirements Rule contains a

<sup>9</sup>EPA has provided draft guidance for states regarding modeling analyses to support the designations process for the 2010 SO<sub>2</sub> NAAQS. *SO<sub>2</sub> NAAQS Designations Modeling Technical Assistance Document (draft)*, EPA Office of Air and Radiation and Office of Air Quality Planning and Standards, December 2013, available at <http://www.epa.gov/airquality/sulfurdioxide/implement.html>.

process by which state air agencies characterize air quality around SO<sub>2</sub> sources through ambient monitoring and/or air quality modeling techniques and submit such data to the EPA. *See, e.g.*, 80 FR 51502 (Aug. 21, 2015). The rule includes a discussion of how EPA anticipates addressing modeling that informs determinations of states' air quality status under the 2010 SO<sub>2</sub> NAAQS. As stated above, EPA believes it is not appropriate to bypass the attainment planning process by imposing separate attainment planning process requirements outside part D and into the infrastructure SIP process.

In conclusion, EPA disagrees with the Commenter's statements that EPA must disapprove New Hampshire's infrastructure SIP submission because it does not establish specific enforceable SO<sub>2</sub> emission limits, either on coal-fired EGUs or other large SO<sub>2</sub> sources, in order to demonstrate attainment and maintenance with the NAAQS at this time.<sup>10</sup> Because we are approving New Hampshire's infrastructure SIP submission with respect to section 110(a)(2)(A), we need not promulgate a federal implementation plan. *See* CAA section 110(c)(1).

*Comment 7:* The Commenter claims that New Hampshire's proposed SO<sub>2</sub> infrastructure SIP lacks emission limitations for Schiller Station informed by air dispersion modeling as well as other large SO<sub>2</sub> sources outside of the nonattainment area and therefore fails to ensure New Hampshire will attain and maintain the 2010 SO<sub>2</sub> NAAQS. The Commenter claims EPA must disapprove the SO<sub>2</sub> infrastructure SIP as it does not "prevent exceedances" or ensure attainment and maintenance of the SO<sub>2</sub> NAAQS.

*Response 7:* EPA agrees with the Commenter that air dispersion modeling, such as AERMOD, can be an important tool in the CAA section 107 designations process for SO<sub>2</sub> and in developing SIPs for nonattainment areas as required by sections 172 and 191–192, including supporting required attainment demonstrations. EPA agrees that prior EPA statements, EPA guidance, and case law support the use of air dispersion modeling in the SO<sub>2</sub> designations process and attainment demonstration process, as well as in analyses of the interstate impact of transported emissions and whether existing approved SIPs remain adequate

<sup>10</sup>Finally, EPA does not disagree with the Commenter's claim that coal-fired EGUs are a large source of SO<sub>2</sub> emissions in New Hampshire based on the 2011 NEL. However, EPA does not agree that this information is relevant to our approval of the infrastructure SIP, which EPA has explained meets requirements in CAA section 110(a)(2).

District of California in *Sierra Club and NRDC v. EPA*, Case 3:13-cv-03953-SI (N.D. Cal.) is available at <http://www3.epa.gov/so2designations/pdfs/201503FinalCourtOrder.pdf>.

to show attainment and maintenance of the SO<sub>2</sub> NAAQS. However, as provided in the previous responses, EPA disagrees with the Commenter that EPA must disapprove the New Hampshire SO<sub>2</sub> infrastructure SIP for its alleged failure to include source-specific SO<sub>2</sub> emission limits that show no exceedances of the NAAQS when modeled or ensure attainment and maintenance of the NAAQS.

In acting to approve or disapprove an infrastructure SIP, EPA is not required to make findings regarding current air quality status of areas within the state, such area's projected future air quality status, or whether existing emissions limits in such area are sufficient to meet a NAAQS in the area. The attainment planning process detailed in part D of the CAA, including sections 172 and 191–192 attainment SIPs, is the appropriate place for the state to evaluate measures needed to bring in-state nonattainment areas into attainment with a NAAQS and to impose additional emission limitations such as SO<sub>2</sub> emission limits on specific sources.

EPA had initially recommended that states submit substantive attainment demonstration SIPs based on air quality modeling in the final 2010 SO<sub>2</sub> NAAQS preamble, 75 FR 35520 (June 22, 2010), and in subsequent draft guidance issued in September 2011 for the section 110(a) SIPs due in June 2013 in order to show how areas then-expected to be designated as unclassifiable would attain and maintain the NAAQS. These initial statements in the preamble and 2011 draft guidance, presented only in the context of the new 1-hour SO<sub>2</sub> NAAQS and not suggested as a matter of general infrastructure SIP policy, were based on EPA's expectation at the time that, by June 2012, most areas would initially be designated as unclassifiable due to limitations in the scope of the ambient monitoring network and the short time available before which states could conduct modeling to support designations recommendations in 2011. However, after conducting extensive stakeholder outreach and receiving comments from the states regarding these initial statements and the timeline for implementing the NAAQS, EPA subsequently stated in the April 12, 2012 letters and in the 2012 Draft White Paper that EPA was clarifying its 2010 SO<sub>2</sub> NAAQS implementation position and was no longer recommending such attainment demonstrations supported by air dispersion modeling for unclassifiable areas (which had not yet been designated) for the June 2013 infrastructure SIPs. Instead, EPA

explained that it expected states to submit infrastructure SIPs that followed the general policy EPA had applied under other NAAQS. EPA then reaffirmed this position in the February 6, 2013 memorandum, "Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard."<sup>11</sup> As previously mentioned, EPA had stated in the preamble to the NAAQS and in the prior 2011 draft guidance that EPA intended to develop and seek public comment on guidance for modeling and development of SIPs for sections 110, 172 and 191–192 of the CAA. After receiving such further comment, EPA has now issued guidance for the nonattainment area SIPs due pursuant to sections 172 and 191–192. See April 23, 2014 *Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions*. In addition, modeling may be an appropriate consideration for states and EPA in further designations for the SO<sub>2</sub> NAAQS in accordance with the Sierra Club and NRDC Consent Decree and the data requirements rule mentioned previously.<sup>12</sup> While the EPA guidance for attainment SIPs and for designations for CAA section 107 and the process for characterizing SO<sub>2</sub> emissions from larger sources discuss the use of air dispersion modeling, EPA's 2013 Infrastructure SIP Guidance did not suggest that states use air dispersion modeling for purposes of the section 110(a)(2) infrastructure SIP. Therefore, as discussed previously, EPA believes the New Hampshire SO<sub>2</sub> infrastructure SIP submittal contains the structural requirements to address elements in section 110(a)(2) as discussed in the proposed approval. EPA believes infrastructure SIPs are general planning SIPs to ensure that a state has adequate resources and authority to implement a NAAQS. Infrastructure SIP submissions are not intended to act or fulfill the obligations of a detailed attainment and/or maintenance plan for each individual

<sup>11</sup> The February 6, 2013 "Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard," one of the April 12, 2012 state letters, and the May 2012 *Draft White Paper* are available at <http://www.epa.gov/airquality/sulfurdioxide/implementation.html>.

<sup>12</sup> The Consent Decree in *Sierra Club and NRDC v. EPA*, Case 3:13-cv-03953-SI (N.D. Cal.) is available at <http://www.epa.gov/airquality/sulfurdioxide/designations/pdfs/201503FinalCourtOrder.pdf>. See 80 FR 51052, August 21, 2015 (EPA's data requirements rule). See also *Updated Guidance for Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard*, Stephen D. Page, Director, EPA's Office of Air Quality Planning Standards, March 20, 2015, available at <http://www.epa.gov/airquality/sulfurdioxide/pdfs/20150320SO2designations.pdf>.

area of the state that is not attaining the NAAQS. While infrastructure SIPs must address modeling authorities in general for section 110(a)(2)(K), EPA believes 110(a)(2)(K) requires infrastructure SIPs to provide the state's authority for air quality modeling and for submission of modeling data to EPA, not specific air dispersion modeling for large stationary sources of pollutants. In the proposal for this rulemaking action, EPA provided an explanation of New Hampshire's ability and authority to conduct air quality modeling when required and its authority to submit modeling data to the EPA. The comments relating to EPA's use of AERMOD or modeling in general in designations pursuant to section 107 are likewise irrelevant as EPA's present approval of New Hampshire's infrastructure SIP is unrelated to the section 107 designations process. As outlined in the August 23, 2010 clarification memo, "Applicability of Appendix W Modeling Guidance for the 1-hour SO<sub>2</sub> National Ambient Air Quality Standard" (U.S. EPA, 2010a), AERMOD is the preferred model for single source modeling to address the 1-hour SO<sub>2</sub> NAAQS as part of the NSR/PSD permit programs. Therefore, as attainment SIPs, designations, and NSR/PSD actions are outside the scope of a required infrastructure SIP for the 2010 SO<sub>2</sub> NAAQS for section 110(a), EPA provides no further response to the Commenter's discussion of air dispersion modeling for these applications. If the Commenter resubmits its air dispersion modeling for the New Hampshire EGU, or updated modeling information in the appropriate context, EPA will address the resubmitted modeling or updated modeling at that time.

The Commenter, citing administrative law principles regarding consideration of comments provided during a rulemaking process,<sup>13</sup> contends that EPA *must* consider the modeling data the Commenter has submitted "over the years which demonstrate the inadequacy of New Hampshire's rules." For the reasons previously explained, however, the purpose for which the Commenter submitted the modeling—namely, to assert that current air quality in the area in which Schiller Station is located does not meet the NAAQS—is not relevant to EPA's action on this infrastructure SIP, and consequently EPA is not required to consider the modeling in evaluating the approvability of the infrastructure SIP.

<sup>13</sup> The Commenter cites to *Motor Vehicle Manufacturers Association v. State Farm Mutual Auto Insurance Co.*, 463 U.S. 29, 43 (1983) and *NRDC v. EPA*, 571 F.3d 1245, 1254 (D.C. Cir. 2009).



EPA does not believe infrastructure SIPs must contain emission limitations informed by air dispersion modeling in order to meet the requirements of section 110(a)(2)(A). Thus, EPA has evaluated the persuasiveness of the Commenter's submitted modeling in finding that it is not relevant to the approvability of New Hampshire's proposed infrastructure SIP for the 2010 SO<sub>2</sub> NAAQS, but EPA has made no judgment regarding whether the Commenter's submitted modeling is sufficient to show violations of the NAAQS.

While EPA does not believe that infrastructure SIP submissions are required to contain emission limits assuring in-state attainment of the NAAQS, as suggested by the Commenter, EPA does recognize that in the past, states have, in their discretion, used infrastructure SIP submittals as a 'vehicle' for incorporating regulatory revisions or source-specific emission limits into the state's plan. See 78 FR 73442 (December 6, 2013) (approving regulations Maryland submitted for incorporation into the SIP along with the 2008 ozone infrastructure SIP to address ethics requirements for State Boards in sections 128 and 110(a)(2)(E)(ii)). While these SIP revisions are intended to help the state meet the requirements of section 110(a)(2), these "ride-along" SIP revisions are not intended to signify that all infrastructure SIP submittals must, in order to be approved by EPA, have similar regulatory revisions or source-specific emission limits. Rather, the regulatory provisions and source-specific emission limits the state relies on when showing compliance with section 110(a)(2) have, in many cases, likely already been incorporated into the state's SIP prior to each new infrastructure SIP submission; in some cases this was done for entirely separate CAA requirements, such as attainment plans required under section 172, or for previous NAAQS.

*Comment 8:* The Commenter asserts that EPA may not approve the proposed New Hampshire SO<sub>2</sub> infrastructure SIP because it fails to include enforceable emission limitations with a 1-hour averaging time (or, if longer averaging periods are used, more stringent numerical emission limits) that apply at all times. For support, the Commenter cites to the definition of "emission limitation" at CAA section 302(k). The Commenter also claims EPA has stated that 1-hour averaging times are necessary for the 2010 SO<sub>2</sub> NAAQS citing to EPA's April 23, 2014 *Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions*, a February 3, 2011, EPA

Region 7 letter to the Kansas Department of Health and Environment regarding the need for 1-hour SO<sub>2</sub> emission limits in a PSD permit, an EPA Environmental Appeals Board (EAB) decision rejecting use of a 3-hour averaging time for a SO<sub>2</sub> limit in a PSD permit,<sup>14</sup> and EPA's disapproval of a Missouri SIP that relied on annual averaging for SO<sub>2</sub> emission rates.<sup>15</sup> Thus, the Commenter contends EPA must disapprove New Hampshire's infrastructure SIP, which the Commenter claims fails to require emission limits with adequate averaging times.

*Response 8:* EPA disagrees that EPA must disapprove the proposed New Hampshire infrastructure SIP because the SIP does not contain enforceable SO<sub>2</sub> emission limitations with 1-hour averaging periods that apply at all times, as this issue is not appropriate for resolution at this stage. The comment does not assert that the SO<sub>2</sub> emission limits in New Hampshire's SIP are not enforceable or that they do not apply at all times, instead the comment focuses on the lack of 1-hour averaging times. As EPA has noted previously, the purpose of the section 110(a)(2) SIP is to ensure that the State has the necessary structural components to implement programs for attainment and maintenance of the NAAQS.<sup>16</sup>

While EPA does agree that the averaging time is a critical consideration for purposes of substantive SIP revisions, such as attainment demonstrations, the averaging time of existing rules in the SIP is not relevant for determining that the State has met the applicable requirements of section 110(a)(2) with respect to the infrastructure elements addressed in the present SIP action.<sup>17</sup> Therefore, because

<sup>14</sup> *In re Mississippi Lime Co.*, 15 E.A.D. 349, 379–82 (EAB Aug. 9, 2011).

<sup>15</sup> 71 FR 12623, 12,624 (Mar. 13, 2006) (disapproving a control strategy SO<sub>2</sub> SIP).

<sup>16</sup> As EPA has stated, some areas are designated nonattainment areas pursuant to CAA section 107 for the 2010 SO<sub>2</sub> NAAQS in the State. Thus, while the State, at this time, has an obligation to submit attainment plans for the 2010 SO<sub>2</sub> NAAQS for sections 172, 191 and 192, EPA believes the appropriate time for examining necessity of the averaging periods within any submitted SO<sub>2</sub> emission limits on specific sources is within the attainment planning process.

<sup>17</sup> For a discussion on emission averaging times for emissions limitations for SO<sub>2</sub> attainment SIPs, see the April 23, 2014 *Guidance for 1-Hour SO<sub>2</sub> Nonattainment Area SIP Submissions*. EPA explained that it is possible, in specific cases, for states to develop control strategies that account for variability in 1-hour emissions rates through emission limits with averaging times that are longer than 1-hour, using averaging times as long as 30-days, but still provide for attainment of the 2010 SO<sub>2</sub> NAAQS as long as the limits are of at least comparable stringency to a 1-hour limit at the

EPA finds New Hampshire's SO<sub>2</sub> infrastructure SIP approvable without the additional SO<sub>2</sub> emission limitations showing in-state attainment of the NAAQS, EPA finds the issues of appropriate averaging periods for such future limitations not relevant at this time. The Commenter has cited to prior EPA discussion on emission limitations required in PSD permits (from an EAB decision and EPA's letter to Kansas' permitting authority) pursuant to part C of the CAA, which is neither relevant nor applicable to the present SIP action. In addition, as previously discussed, the EPA disapproval of the 2006 Missouri SIP was a disapproval relating to a control strategy SIP required pursuant to part D attainment planning and is likewise not relevant to the analysis of infrastructure SIP requirements.

*Comment 9:* The Commenter states that enforceable emission limits in SIPs are necessary to avoid additional nonattainment designations in areas where modeling or monitoring shows SO<sub>2</sub> levels exceed the 1-hour SO<sub>2</sub> NAAQS and cites to a February 6, 2013 EPA document, *Next Steps for Area Designations and Implementation of the Sulfur Dioxide National Ambient Air Quality Standard*, which the Commenter contends discusses how states could avoid future nonattainment designations. The Commenter claims the modeling it conducted for Schiller Station indicates exceedances over a wide area in both New Hampshire and Maine. The Commenter states that additional areas in New Hampshire will have to be designated nonattainment "if source-specific enforceable emissions limits are not placed on PSNH Schiller Station through this I-SIP." In summary, the Commenter asserts that, "in order to implement the NAAQS, comply with section 110(a)(2)(A), and avoid additional nonattainment designations for areas impacted by" Schiller Station, EPA must disapprove the New Hampshire infrastructure SIP and ensure that emission limits "relied upon in the Infrastructure SIP" will not allow large sources of SO<sub>2</sub> to cause exceedances of the 2010 SO<sub>2</sub> NAAQS.

*Response 9:* EPA appreciates the Commenter's concern with avoiding nonattainment designations in New Hampshire for the 2010 SO<sub>2</sub> NAAQS. However, Congress designed the CAA such that states have the primary responsibility for achieving and maintaining the NAAQS within their geographic areas by submitting SIPs

critical emission value. EPA has not yet evaluated any specific submission of such a limit, and so is not at this time prepared to take final action to implement.

which will specify the details of how the states will meet the NAAQS. Pursuant to section 107(d), the states make initial recommendations of designations for areas within each state and EPA then promulgates the designations after considering the state's submission and other information. EPA promulgated initial designations for the 2010 SO<sub>2</sub> NAAQS in August 2013 for areas in which monitoring at that time showed violations of the NAAQS, but has not yet issued designations for other areas and will complete the required designations pursuant to the schedule contained in the recently entered Consent Decree. EPA will designate additional areas for the 2010 SO<sub>2</sub> NAAQS in accordance with CAA section 107 and existing EPA policy and guidance. New Hampshire may, on its own accord, decide to impose additional SO<sub>2</sub> emission limitations to avoid future designations to nonattainment. If additional New Hampshire areas are designated nonattainment, New Hampshire will then have the initial opportunity to develop additional emissions limitations needed to attain the NAAQS, and EPA would be charged with reviewing whether the SIP is adequate to demonstrate attainment. See *Commonwealth of Virginia v. EPA*, 108 F.3d 1397, 1410 (D.C. Cir. 1997) (citing *Nat. Res. Def. Council, Inc. v. Browner*, 57 F.3d 1122, 1123 (D.C. Cir. 1995)) (discussing that states have primary responsibility for determining an emission reductions program for its areas subject to EPA approval dependent upon whether the SIP as a whole meets applicable requirements of the CAA). However, such considerations are not required of New Hampshire at the infrastructure SIP stage of NAAQS implementation, as the Commenter's statements concern the separate designations process under section 107.<sup>18</sup> EPA disagrees that the

infrastructure SIP must be disapproved for not including enforceable emissions limitations to prevent future 1-hour SO<sub>2</sub> nonattainment designations.

*Comment 10:* The commenter notes that New Hampshire did not include a submittal to satisfy CAA section 110(a)(2)(D)(i)(I) (the so-called "Good Neighbor" provision) and asserts that, as a result, "EPA must take immediate action here to disapprove the SO<sub>2</sub> I-SIP Certification . . . and initiate the FIP [Federal Implementation Plan] process with regard to the I-SIP's 'Good Neighbor' provisions."

*Response 10:* EPA is not taking any action at this time with respect to Element D(i)(I), which addresses emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state, also known as "good neighbor" SIPs or "interstate transport" SIPs. As the commenter notes, New Hampshire did not include any provisions to address the requirements of section 110(a)(2)(D)(i)(I) in its September 13, 2013 infrastructure SIP submittal for the 2010 SO<sub>2</sub> NAAQS. In the NPR, EPA did not propose to take any action with respect to New Hampshire's obligations pursuant to section 110(a)(2)(D)(i)(I) for the September 13, 2013 infrastructure SIP submittal.

Because New Hampshire did not make a submission in its September 13, 2013 SIP submittal to address the requirements of section 110(a)(2)(D)(i)(I), EPA is not required to have proposed or to take final SIP approval or disapproval action on this element under section 110(k) of the CAA. In this case, there has been no substantive submission for EPA to evaluate under section 110(k). Nor does the lack of a submission addressing section 110(a)(2)(D)(i)(I) require EPA to disapprove New Hampshire's September 13, 2013 SIP submittal as to the other elements of section 110(a)(2). EPA interprets its authority under section 110(k)(3) of the CAA as affording EPA the discretion to approve, or conditionally approve, individual elements of New Hampshire's infrastructure SIP submissions, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) of the CAA. EPA views discrete infrastructure SIP requirements in section 110(a)(2), such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual severable measures in a plan submission.

On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City*

*Generation, L.P. v. EPA*, 696 F.3d 7, 31 (D.C. Cir. 2012), holding, among other things, that states had no obligation to submit good neighbor SIPs until the EPA had first quantified each state's good neighbor obligation. Accordingly, under that decision the submission deadline for good neighbor SIPs under the CAA would not necessarily be tied to the promulgation of a new or revised NAAQS. While the EPA sought review first with the D.C. Circuit *en banc* and then with the United States Supreme Court, the EPA complied with the D.C. Circuit's ruling during the pendency of its appeal. The D.C. Circuit declined to consider EPA's appeal *en banc*, but, on April 29, 2014, the Supreme Court reversed the D.C. Circuit's *EME Homer City* opinion and held, among other things, that under the plain language of the CAA, states must submit SIPs addressing the good neighbor requirement in CAA section 110(a)(2)(D)(i)(I) within three years of promulgation of a new or revised NAAQS, regardless of whether the EPA first provides guidance, technical data or rulemaking to quantify the state's obligation.

Pursuant to CAA section 110(c)(1), EPA is authorized and obligated to promulgate a FIP, if EPA takes any of the following actions: (1) Finds that a state has failed to make a required SIP submission; (2) finds that a required submission was incomplete; or (3) disapproves a required SIP submission in whole or in part. With respect to the 2010 SO<sub>2</sub> NAAQS, EPA has not issued a finding of failure to submit, issued a finding of incompleteness, or disapproved the submission in whole or in part. Consequently, the two-year FIP clock has not yet begun to run. EPA agrees in general that sections 110(a)(1) and (a)(2) of the CAA require states to submit, within three years of promulgation of a new or revised NAAQS, a plan that addresses cross-state air pollution under section 110(a)(2)(D)(i)(I). In this rulemaking, however, EPA is only approving portions of New Hampshire's infrastructure SIP submissions for the 2010 SO<sub>2</sub> NAAQS, which did not include provisions for interstate transport under section 110(a)(2)(D)(i)(I). A finding of failure to submit a SIP submission for the 2010 SO<sub>2</sub> NAAQS addressing section 110(a)(2)(D)(i)(I) could occur in a separate rulemaking. As that issue was not addressed in the July 17, 2015 NPR,<sup>19</sup> and is thus not pertinent to this

<sup>18</sup>EPA also notes that in EPA's final rule regarding the 2010 SO<sub>2</sub> NAAQS, EPA noted that it anticipates several forthcoming national and regional rules, such as the Industrial Boilers standard under CAA section 112, are likely to require significant reductions in SO<sub>2</sub> emissions over the next several years. See 75 FR 35520. EPA continues to believe similar national and regional rules will lead to SO<sub>2</sub> reductions that will help achieve compliance with the 2010 SO<sub>2</sub> NAAQS. If it appears that states with areas designated nonattainment in 2013 will nevertheless fail to attain the NAAQS as expeditiously as practicable (but no later than October 2018) during EPA's review of attainment SIPs required by section 172, the CAA provides authorities and tools for EPA to solve such failure, including, as appropriate, disapproving submitted SIPs and promulgating federal implementation plans. Likewise, for any areas designated nonattainment after 2013, EPA has the same authorities and tools available to address any areas which do not timely attain the NAAQS.

<sup>19</sup> See 80 FR 42446, 42452 (July 17, 2015) ("In today's rulemaking, EPA is not proposing to

rulemaking, EPA provides no further response. In sum, New Hampshire's and EPA's obligations regarding interstate transport of pollution for the 2010 SO<sub>2</sub> NAAQS will be addressed in later rulemakings.

**III. Final Action**

EPA is approving a SIP submission from New Hampshire certifying the state's current SIP is sufficient to meet

the required infrastructure elements under sections 110(a)(1) and (2) for the 2010 SO<sub>2</sub> NAAQS, with the exception of certain aspects relating to the state's PSD program which we are conditionally approving. On September 25, 2015, we conditionally approved the portion of New Hampshire's PSD program that pertains to providing notification to neighboring states of

certain permitting actions in New Hampshire. See 80 FR 57722. Therefore, we are conditionally approving herein the related portions of New Hampshire's infrastructure SIP submittals affected by our September 25, 2015 conditional approval. A summary of EPA's actions regarding these infrastructure SIP requirements are contained in Table 1 below.

TABLE 1—ACTION TAKEN ON NH INFRASTRUCTURE SIP SUBMITTALS FOR LISTED NAAQS

Element	2010 SO <sub>2</sub>
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)(i): Enforcement of SIP measures	A
(C)(ii): PSD program for major sources and major modifications	A*
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2)	NS
(D)(i)(II): PSD (prong 3)	A*
(D)(i)(III): Visibility Protection (prong 4)	A
(D)(ii): Interstate Pollution Abatement	A*
(D)(iii): International Pollution Abatement	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	NA
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A*
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the above table, the key is as follows:

A—Approve

A\*—Approve, but conditionally approve aspect of PSD program relating to notification to neighboring states

+—Not germane to infrastructure SIPs

NS—No Submittal

NA—Not applicable

Additionally, we are updating the classification of two air quality control regions in New Hampshire at 40 CFR 52.1521. The classification of the Androscoggin Valley Interstate control region is being revised from Priority 1A to Priority III and the Merrimack Valley—Southern New Hampshire Interstate control region is being revised from Priority I to Priority III based on recent air quality monitoring data collected by the state.

EPA is conditionally approving an aspect of New Hampshire's SIP revision submittals pertaining to the state's PSD

program. The outstanding issue with the PSD program concerns the lack of a requirement that neighboring states be notified of the issuance of a PSD permit by the New Hampshire Department of Environmental Services. On September 25, 2015, we conditionally approved New Hampshire's PSD program for this reason. See 80 FR 57722. Accordingly, we are also conditionally approving this aspect of New Hampshire's infrastructure SIP revisions for the 2010 SO<sub>2</sub> NAAQS. New Hampshire must submit to EPA a SIP submittal addressing the above mentioned deficiency in the state's PSD program within the timeframe provided within our September 25, 2015 action. If the State fails to do so, the elements we are conditionally approving in this rulemaking will be disapproved 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 New Hampshire

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 aspect of New Hampshire's PSD program will also be disapproved at that time. If EPA approves the revised PSD program submittal, then the portions of New Hampshire's infrastructure SIP submittals that were conditionally approved will be fully approved in their entirety and replace the conditional approval in the SIP. In addition, final disapproval of an infrastructure SIP submittal triggers the Federal implementation plan (FIP) requirement under section 110(c).

approve or disapprove New Hampshire's compliance with section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone, 2010 NO<sub>2</sub> and 2010 SO<sub>2</sub>

NAAQS, since New Hampshire's infrastructure SIPs for these NAAQS do not include a submittal with

respect to transport for sub-element 1, prongs 1 and 2.'').

**IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 6, 2016. 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)).

**NEW HAMPSHIRE NONREGULATORY**

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxides.

Dated: June 15, 2016.

**H. Curtis Spalding,**

*Regional Administrator, EPA New England.*

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

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart EE—New Hampshire**

■ 2. Section 52.1519 is amended by adding paragraph (a)(11) to read as follows:

**§ 52.1519 Identification of plan—conditional approval.**

(a) \* \* \*

(11) 2010 Sulfur Dioxide NAAQS: The 110(a)(2) infrastructure SIP submitted on September 13, 2013, is conditionally approved for Clean Air Act (CAA) elements 110(a)(2)(C)(ii), (D)(i)(II), D(ii), and (J)(iii) only as it relates to the aspect of the PSD program pertaining to providing notification to neighboring states of certain permitting activity being considered by New Hampshire. This conditional approval is contingent upon New Hampshire taking actions to address these requirements as detailed within a final conditional approval dated September 25, 2015.

\* \* \* \* \*

■ 3. In § 52.1520, the table in paragraph (e) is amended by revising the entry for "Infrastructure SIP for the 2010 SO<sub>2</sub> NAAQS" to read as follows:

**§ 52.1520 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date <sup>3</sup>	Explanations
* Infrastructure SIP for the 2010 SO <sub>2</sub> NAAQS.	* Statewide .....	* 9/13/2013	* 7/8/2016 [Insert <b>Federal Register</b> citation]	* Approved submittal, except for certain aspects relating to PSD which were conditionally approved. See 52.1519.

NEW HAMPSHIRE NONREGULATORY—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date <sup>3</sup>	Explanations
*	*	*	*	*

<sup>3</sup>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.

■ 4. In § 52.1521, the table is amended by revising the entries for “Androscoggin Valley Interstate” and

“Merrimack Valley—Southern New Hampshire Interstate” to read as follows:

**§ 52.1521 Classification of regions.**

\* \* \* \* \*

Air quality control region	Pollutant				
	Particulate matter	Sulfur oxides	Nitrogen dioxide	Carbon monoxide	Ozone
Androscoggin Valley Interstate .....	IA	III	III	III	III
* * * * *	*	*	*	*	*
Merrimack Valley—Southern New Hampshire Interstate .....	I	III	III	III	I

[FR Doc. 2016–15623 Filed 7–7–16; 8:45 am]

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