

#### IV. Proposed Action

EPA is proposing to approve the aforementioned revisions to the North Carolina SIP submitted by the State of North Carolina on March 24, 2006, pursuant to section 110 because these changes are not inconsistent with the CAA and EPA's regulations. Changes to the other sections in these submissions have been or will be processed in a separate action, as appropriate, for approval into the North Carolina SIP.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

application of those requirements would be inconsistent with the CAA; and

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

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

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

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

Dated: December 21, 2018.

**Mary S. Walker,**

*Acting Regional Administrator, Region 4.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R01-OAR-2018-0829; FRL-9989-01-Region 1]

#### Air Plan Approval; Massachusetts; Nonattainment New Source Review Program Revisions; Infrastructure Provisions for National Ambient Air Quality Standards; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. On February 9, 2018, the Massachusetts Department of Environmental Protection (MassDEP) submitted revisions to the EPA satisfying the MassDEP's earlier commitment to adopt and submit provisions that meet certain

requirements of the Nonattainment New Source Review (NNSR) air permit program regulations. The EPA is also proposing to approve the Commonwealth's NNSR certification, which was included in the February 9, 2018 SIP revision, as sufficient for the purposes of satisfying the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). In addition, this action will also convert the EPA's December 21, 2016 conditional approval for certain infrastructure provisions relating to Massachusetts's NNSR air permit program to full approval. This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before March 18, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2018-0829 at <https://www.regulations.gov>, or via email to [wortman.eric@epa.gov](mailto:wortman.eric@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.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 <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, Boston, MA. The 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:** Eric Wortman, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100 (Mail Code OEP05-2), Boston, MA 02109-3912, tel. (617) 918-1624, email [wortman.eric@epa.gov](mailto:wortman.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

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**I. Massachusetts’s February 9, 2018 SIP Submittal Addressing the EPA’s December 21, 2016 Conditional Approval Regarding 310 CMR 7.00**

*A. What is the background information for the EPA’s December 21, 2016 conditional approval?*

On December 21, 2016, the EPA published a final conditional approval for Massachusetts’s June 6, 2014 SIP submittal. See 81 FR 93627. That conditional approval identified a number of issues. One of those issues relates to a provision under Section 110(a)(2)(D)(i)(II) of the Clean Air Act (CAA) that was not included in the Commonwealth’s June 6, 2014 SIP submittal. In a letter dated June 14, 2016, the Commonwealth committed to submitting for inclusion in the SIP, by a date no later than one year from conditional approval of Massachusetts’s infrastructure SIP submissions, the necessary provisions that would address the identified issues. The conditional approval was part of the EPA’s December 21, 2016 final action on Massachusetts’s infrastructure SIP submittal for the 1997 ozone, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), and 2010 sulfur dioxide (SO<sub>2</sub>) NAAQS. See 81 FR 93627.

*B. What is a conditional approval?*

Under section 110(k)(4) of the CAA, the EPA may conditionally approve a plan based on a commitment from the state to adopt specific enforceable measures by a date no later than one year from the effective date of final conditional approval. If the EPA subsequently determines that the state has met its commitment, the EPA publishes a document in the **Federal Register** notifying the public that the EPA is converting the conditional approval to a full approval.

Otherwise, if the state fails to meet its commitment in a timely manner, then the conditional approval automatically converts to a disapproval. If that were to occur, the EPA would then notify the state by letter. At that time, the conditionally approved SIP revisions would not be part of the state’s approved SIP. The EPA subsequently would publish a document in the **Federal Register** notifying the public that the conditional approval had converted to a disapproval.

The EPA’s December 21, 2016 conditional approval required the MassDEP to submit revised regulations that address Prong 3 of Section 110(a)(2)(D)(i)(II) of the CAA. To address the conditional approval, on February 9, 2018, the MassDEP submitted regulatory provisions for approval into the Commonwealth’s SIP. As explained in Section I.C of this document, the revisions addressed the NNSR requirements that would make the Commonwealth’s NNSR program applicable to sources regardless of the attainment status of the area where the source is located. These revisions were necessary because Massachusetts is located in the Ozone Transport Region (OTR).<sup>1</sup>

*C. Were the terms of the December 21, 2016 conditional approval met?*

Section 110(a)(2)(D) contains a comprehensive set of air quality management elements pertaining to the transport of air pollution that states must address. It covers the following five topics, categorized as sub-elements: Sub-element 1, Contribute to nonattainment, and interfere with maintenance of a NAAQS; Sub-element 2, Prevention of Significant Deterioration (PSD); Sub-element 3,

<sup>1</sup>CAA section 184 details specific requirements for a group of states (and the District of Columbia) that make up the OTR. States in the OTR are required to mandate a certain level of emissions control for the pollutants that form ozone, even if the areas in the state meet the ozone standards. Thus, NNSR permitting requirements apply statewide, even if the state is designated attainment for the ozone NAAQS.

Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into four prongs.

One aspect of section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state. The EPA sometimes refers to this requirement under subsection 110(a)(2)(D)(i)(II) as prong 3. A state’s infrastructure SIP submittal cannot be considered approvable for prong 3 of 110(a)(2)(D)(i)(II) unless the EPA has issued final approval of the state’s PSD SIP, or alternatively, has issued final approval of a SIP that the EPA has otherwise found adequate to prohibit interference with other states’ measures to prevent significant deterioration of air quality.

Under prong 3 of 110(a)(2)(D)(i)(II), the EPA also reviews the potential for in-state sources not subject to PSD to interfere with PSD in an attainment or unclassifiable area of another state. EPA guidance recommends that a “fully approved NNSR program with respect to any previous NAAQS may generally be considered by the EPA as adequate for purposes of meeting this requirement of prong 3 with respect to sources and pollutants subject to such program.”<sup>2</sup> The EPA last approved the Commonwealth’s NNSR program on October 27, 2000. See 65 FR 64360. Because Massachusetts is located within the OTR,<sup>3</sup> the CAA requires sources emitting 100 tons per year (tpy) or more of nitrogen oxides (NO<sub>x</sub>) or 50 tpy or more of volatile organic compounds (VOCs) located in attainment or unclassifiable areas to be subject to the requirements that would be applicable to major stationary sources if the area were classified as a moderate nonattainment area. See CAA sections 182(f)(1), 184(b)(2), 42 U.S.C. 7511a, 7511c. In other words, even if located in an area designated attainment or unclassifiable for ozone, under the CAA and its implementing regulations, such sources are subject to NNSR rather than PSD. The major source threshold for NNSR in Massachusetts is currently 50 tpy for NO<sub>x</sub> instead of 100 tpy due to the fact that part of Massachusetts had

<sup>2</sup> See page 32 of EPA’s September 13, 2013 guidance titled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).”

<sup>3</sup> See CAA 184(a), 42 U.S.C. 7511c(a).

been designated in 1990 as a serious nonattainment area for the 1979 1-hour ozone standard.<sup>4,5</sup> Massachusetts's current SIP-approved NNSR regulations, however, apply only in nonattainment areas,<sup>6</sup> meaning that sources with 50 tpy (see footnote 5) or more of either VOCs or NO<sub>x</sub> emissions in much of Massachusetts are not covered by either the PSD federal implementation plan (FIP), applicable in the Commonwealth, or the Commonwealth's EPA-approved NNSR program. Thus, the Commonwealth has not shown that it has met this requirement of prong 3. However, as a matter of state regulation, the Commonwealth has promulgated and implements NNSR regulations that make the Commonwealth's NNSR program applicable to such sources regardless of area designation. We are proposing to approve these regulations into the Commonwealth's SIP.

On February 9, 2018, MassDEP submitted the necessary provisions for inclusion into the SIP to make its EPA-approved NNSR program applicable to such sources and address the relevant issues identified in the EPA's December 21, 2016 conditional approval. Specifically, MassDEP's SIP submittal included the following revisions to 310 CMR 7.00: Appendix A for inclusion in the SIP:

- The *Introduction* in section (1) of Appendix A was revised to clarify that any source that is major for VOCs or NO<sub>x</sub> is subject to the requirements in Appendix A.
- Section (b) of the definition of *Major Modification* was revised to remove the requirement that a major source must be located in an ozone nonattainment area for the purpose of applying the requirements of Appendix A.
- Section (b) of the definition of *Major Stationary Source* was revised to remove the requirement that a major stationary source of NO<sub>x</sub> must be located in an ozone nonattainment area for the purpose of applying the requirements of Appendix A.
- The definition of *Nonattainment Pollutant* was added to clarify that NO<sub>x</sub> and VOCs are considered nonattainment

pollutants regardless of the attainment designation status where the source is located.

- Section (3) of Appendix A was revised at subsection (b) to include the requirement for Appendix A to apply if a new major stationary source or major modification is major for NO<sub>x</sub> or VOCs.

Massachusetts failed to submit the technical demonstration in a timely manner. Therefore, our conditional approval became a disapproval on January 20, 2018. However, as noted previously, on February 9, 2018, the MassDEP submitted SIP revisions to the EPA to address the issues identified in the December 21, 2016 conditional approval under prong 3 of Section 110(a)(2)(D)(i)(II), effectively remedying the disapproval relating to that provision of the CAA. The EPA has reviewed MassDEP's SIP submittal and determined that MassDEP's regulations are consistent with the underlying federal NNSR regulations in 40 CFR part 51 and meet the terms of the December 21, 2016 conditional approval. Accordingly, the EPA is proposing to approve the revisions into the SIP and convert the December 21, 2016 conditional approval to a full approval for prong 3 of Section 110(a)(2)(D)(i)(II).

## II. Proposed Approval of NNSR Certification

### A. Background on the 2008 8-Hour Ozone NAAQS

On March 12, 2008, the EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Under the EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is at least 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of certified ambient air quality data. Dukes County in Massachusetts was designated nonattainment for the 2008 8-hour ozone NAAQS on April 30, 2012

using 2009–2011 ambient air quality data. See 77 FR 30088 (May 21, 2012). At the time of designation, Dukes County was classified as a marginal nonattainment area. On March 6, 2015, the EPA issued a final rule entitled, "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (SIP Requirements Rule), which established the requirements that state, tribal, and local air quality management agencies must meet in developing implementation plans for areas where ozone concentrations exceed the 2008 8-hour ozone NAAQS.<sup>7</sup> See 80 FR 12264. Areas that were designated as marginal nonattainment areas for the 2008 8-hour ozone NAAQS were required to attain no later than July 20, 2015, based on 2012–2014 monitoring data. See 40 CFR 51.1103. The Dukes County nonattainment area attained the 2008 8-hour ozone NAAQS by July 20, 2015, and therefore on April 11, 2016, the EPA Administrator signed a final determination of attainment for the 2008 8-hour ozone standard for the Dukes County nonattainment area. See 81 FR 26697 (May 4, 2016).

Based on initial nonattainment designations for the 2008 8-hour ozone standard, as well as the March 6, 2015 final SIP Requirements Rule, Massachusetts was required to develop a SIP revision addressing certain CAA requirements for the Dukes County nonattainment area, and submit to the EPA an NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (*i.e.*, July 20, 2015).<sup>8,9</sup> Because Massachusetts

<sup>7</sup> The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

<sup>8</sup> Where an air agency determines that the provisions in or referred to by its existing EPA approved SIP are adequate with respect to a given infrastructure SIP element (or sub-element) even in light of the promulgation of a new or revised NAAQS, the air agency may make a SIP submission in the form of a certification. This type of infrastructure SIP submission may, *e.g.*, take the form of a letter to the EPA from the Governor or her/his designee containing a "certification" (or declaration) that the already-approved SIP contains or references provisions that satisfy all or some of the requirements of section 110(a)(2), as applicable, for purposes of implementing the new or revised NAAQS.

<sup>9</sup> Massachusetts's obligation to submit the NNSR Certification SIP was not affected by the D.C.

<sup>4</sup> On November 6, 1991, the EPA promulgated designations for the 1979 1-hour ozone standard. See 56 FR 56694 (November 6, 1991).

<sup>5</sup> Because Massachusetts is in the OTR, the major source threshold for VOCs is 50 tpy.

<sup>6</sup> At the time the EPA last approved Massachusetts's NNSR regulations (October 27, 2000; 65 FR 64361), the Western Massachusetts area was nonattainment for the 1979 1-hour ozone NAAQS, and the Eastern Massachusetts area was attaining that NAAQS. The Eastern Massachusetts area became nonattainment as of January 16, 2001 when the EPA reinstated the 1-hour ozone NAAQS for that area. See 65 FR 45181 (July 20, 2000).

already has a NNSR program that applies statewide, Massachusetts can certify the adequacy of its existing NNSR program with respect to the 2008 ozone NAAQS for the Dukes County nonattainment area.<sup>10</sup> See 40 CFR 51.1114.

On February 3, 2017, the EPA found that 15 states (including the Commonwealth of Massachusetts) and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 8-hour ozone NAAQS that apply to nonattainment areas and/or states in the ozone transport region.<sup>11</sup> See 82 FR 9158. As explained in that rulemaking action, consistent with the CAA and EPA regulations, these findings of failure to submit established certain deadlines for the imposition of sanctions if a state does not submit a timely SIP revision addressing the requirements for which the finding is being made, and for the EPA to promulgate a federal implementation plan (FIP) to address any outstanding SIP requirements.

MassDEP submitted its February 9, 2018 SIP revision to address the specific NNSR requirements for the 2008 8-hour ozone NAAQS, located in 40 CFR 51.160–165, as well as its obligations under the EPA's February 3, 2017 Findings of Failure to Submit. The 18-month sanctions clock stopped when MassDEP submitted the SIP revision and the SIP revision became complete by operation of law on August 9, 2018. The EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS is provided in Section II.B.

Circuit Court's February 16, 2018 decision on portions of the SIP Requirements Rule in *South Coast Air Quality Mgmt. Dist. v. EPA*.

<sup>10</sup> Massachusetts's February 9, 2018 certification of adequacy that the SIP meets the NNSR requirements for the 2008 ozone NAAQS relies on the inclusion of the SIP revisions proposed for approval in Section I of this action.

<sup>11</sup> States have three years after the effective date of designation for the 2008 8-hour ozone NAAQS to submit SIP revisions addressing NNSR for their nonattainment areas. See 40 CFR 51.1114. Massachusetts's SIP revision certified that its SIP-approved state regulation addressing nonattainment new source review for all new stationary sources and modified existing stationary sources in the State exceeds the requirements of section 182(a)(2)(C) for the 2008 8-hour ozone NAAQS. However, EPA does not believe that the two-year deadline contained in CAA section 182(a)(2)(C) applies to NNSR SIP revisions for implementing the 8-hour ozone NAAQS. See 80 FR 12264, 12267 (March 6, 2015); 70 FR 71612, 71683 (November 29, 2005). The submission of NNSR SIPs due on November 15, 1992, satisfied the requirement for states to submit NNSR SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within two years after the date of enactment of the 1990 CAA Amendments. *Id.*

### B. Analysis of Massachusetts's NNSR Requirements

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. These NNSR program requirements include those promulgated in the "Phase 2 Rule" implementing the 1997 8-hour ozone NAAQS<sup>12</sup> and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: Set major source thresholds for NO<sub>x</sub> and VOCs pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i) through (iv) and (2); classify physical changes at a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO<sub>x</sub> as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider increases of VOCs emissions in extreme ozone nonattainment areas as significant net emissions increases and major modifications for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOCs and NO<sub>x</sub> as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A) through (C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1) and (2); provide that the requirements applicable to VOCs also apply to NO<sub>x</sub> pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOCs and NO<sub>x</sub> pursuant to 40 CFR 51.165(a)(9)(i) through (iii) (renumbered as (a)(9)(ii) through (iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105.

Massachusetts's longstanding SIP-approved NNSR program, established in the Code of Massachusetts Regulations (CMR) at Appendix A to 310 CMR 7.00, applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas. In its SIP revision, Massachusetts certifies that its existing NNSR regulations at 310 CMR 7.00: Appendix A satisfy the requirements of Section 182(a) of the CAA for the 2008

ozone NAAQS as specified in 40 CFR 51.165 for the Dukes County nonattainment area (see footnote 9).

The EPA last approved revisions to the SIP-approved version of Massachusetts's NNSR rule in 2000, addressing, among other things, revisions under the 1990 CAA amendments and other general NNSR permitting requirements. See 65 FR 64360 (October 27, 2000). Massachusetts's SIP-approved NNSR regulations retain the NNSR requirements applicable to serious nonattainment areas, even though the Dukes County nonattainment area was classified as marginal nonattainment under the 2008 8-hour ozone NAAQS. Dukes County was previously classified serious nonattainment as part of the Boston-Lawrence-Worcester (E. Mass) nonattainment area on November 15, 1990 for the 1-hour ozone NAAQS. See 56 FR 56694 (November 6, 1991).

Massachusetts's existing NNSR regulations and the revisions proposed in the February 9, 2018 SIP submittal for inclusion in the SIP are at least as stringent as the federal NNSR requirements and satisfy the requirements of the Phase 2 Rule and SIP Requirements Rule discussed previously. The definitions of "major modification," "major stationary source," "significant," and "nonattainment pollutant" in 310 CMR 7.00: Appendix A are consistent with federal NNSR regulations. In addition, the definition of "major stationary source" and "major modification" properly address the thresholds for VOCs and NO<sub>x</sub>, as precursors to ozone, by establishing the threshold for each of these ozone precursors at 50 tons per year. This threshold for a major modification is consistent with the EPA regulations for serious nonattainment areas. Massachusetts's NNSR regulations also contain the appropriate provisions for determining emissions reduction credits due to shutdowns, establishing offset ratios, and treating NO<sub>x</sub> as a precursor to ozone. Lastly, since Massachusetts's NNSR SIP retains the NO<sub>x</sub> and VOCs thresholds for a serious nonattainment area for ozone that are based on how the Commonwealth was designated nonattainment on November 15, 1990 for the 1-hour ozone standard, the Commonwealth's SIP meets the anti-backsliding requirements.

The EPA notes that neither 310 CMR 7.00: Appendix A nor Massachusetts's approved SIP have the regulatory provision for any emissions change of VOCs in extreme nonattainment areas, specified in 40 CFR 51.165(a)(1)(v)(F), because Massachusetts has never had an

<sup>12</sup> See 70 FR 71612 (November 29, 2005).

area designated extreme nonattainment for any of the ozone NAAQS. The Massachusetts SIP is not required to have this provision for VOCs in extreme nonattainment areas until such time as Massachusetts has an extreme ozone nonattainment area.

### III. Proposed Action

The EPA's review of MassDEP's February 9, 2018 SIP submittal indicates that the submittal satisfies the requirements of the CAA and is appropriate for inclusion into the SIP. The EPA therefore is proposing to approve the SIP revisions discussed in this action. Also, as a result of our proposed approval of the NNSR permitting revisions discussed in Section I, the EPA is proposing to convert the December 21, 2016 conditional approval to a full approval for prong 3 of CAA section 110(a)(2)(D)(i)(II). Other aspects of EPA's December 21, 2016 conditional approval will be addressed in other actions.

The EPA is also proposing to approve MassDEP's February 9, 2018 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Dukes County Nonattainment Area. The EPA has concluded that MassDEP's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under the EPA's February 3, 2017 Findings of Failure to Submit relating to submission of a NNSR certification. The EPA is soliciting public comments on the issues discussed in this action or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rulemaking by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

### IV. Incorporation by Reference

In this rule, the 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, the EPA is proposing to incorporate by reference of Massachusetts's 310 CMR 7.00: Appendix A. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER**

**INFORMATION CONTACT** section of this preamble for more information).

### V. Statutory and Executive Order Reviews

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

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

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

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: February 7, 2019.

**Deborah Szaro,**

*Acting Regional Administrator, EPA Region 1.*

[FR Doc. 2019-02203 Filed 2-13-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2017-0583; FRL-9989-34-Region 5]

### Air Plan Approval; Illinois; Infrastructure SIP Requirements for the 2012 PM<sub>2.5</sub> NAAQS; Interstate Transport

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of the State Implementation Plan (SIP) submission from the Illinois Environmental Protection Agency (IEPA) regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 annual fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS or standard). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements in the Illinois SIP concerning interstate transport provisions.

**DATES:** Comments must be received on or before March 18, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2017-0583 at <http://>